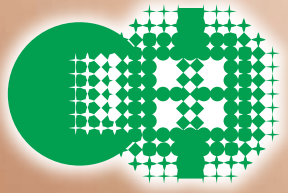


“Discover  
the  
truth”





“

All truths are easy to understand

once they are discovered;

the point is to discover them.”

two circles are in same size

## Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

## Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

## Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

## Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

## Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints

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# History in Brief

## 1988

**20 July**

The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")



*First Commissioner Mr Arthur Garcia, JP*

## 1989

**1 February**

The COMAC Ordinance was enacted

First Commissioner Mr Arthur Garcia, JP assumed office

**1 March**

The Office of COMAC became operational with staff seconded from Government

**15 November**

COMAC became a member of the International Ombudsman Institute ("IOI")

## 1994

**1 February**

Second Commissioner Mr Andrew So, JP assumed office

**24 June**

The COMAC Ordinance was amended:

- to enable the public to lodge complaints directly, instead of by referral from LegCo Members
- to extend the jurisdiction to some major statutory bodies
- to empower the Commissioner to publish anonymised investigation reports
- to empower the Commissioner to initiate direct investigation

**30 June**

Advisers were appointed to provide expert advice and professional opinion

**1 July**

Chinese title of the Commissioner was changed to 「申訴專員」 and the Office to 「申訴專員公署」



*Second Commissioner Mr. Andrew So, JP*

## 1993

**21 July**

Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo



## 1995

### 1 March

Jurisdiction was extended to investigation into alleged breach of Code on Access to Information

### 23-25, 27 October

The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference ("APOC") and the International Ombudsman Symposium

15th APOC



## 1996

### 1 March

Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme

### 15-16 April

The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member

### 12-13 June

First Complaint Management Workshop for public officers was organised

### 5 September

Resource Centre was opened

### 24 October

The Ombudsman was elected to the Board of Directors of the IOI

### 27 December

English titles were changed to "The Ombudsman" and "Office of The Ombudsman"

## 1997

### 1 April

Mediation service was launched as an alternative dispute resolution method

### 25 July

The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively



Third Ombudsman Ms Alice Tai, JP

## 1998

### 8 May

The Ombudsman was elected Secretary to the AOA

## 1999

### 1 April

Third Ombudsman Ms Alice Tai, JP assumed office

### 22 July

The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services



*The Ombudsman's Awards Presentation Ceremony*

## 2000

### 27 July

The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally

### 2 November

The Ombudsman was elected to the Board of Directors of the IOI

## 2001

### 28 March

Telephone complaint service was introduced

### 19 December

The Ombudsman (Amendment) Ordinance 2001 came into operation:

- to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters
- to empower The Ombudsman to set terms and conditions of appointment for staff
- to adopt systems and processes separate from Government

## 2002

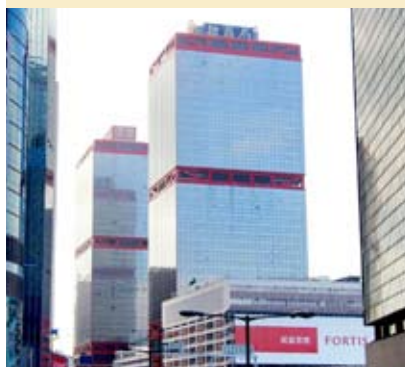
### 6 September

Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan

### 16 October

The Ombudsman was elected Secretary to the IOI

*Permanent office at Shun Tak Centre*



*Mediation Training*

## 2003

### November

Training in mediation was provided for public officers to promote such service among public organisations

## 2004

### 1 April

Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman

### 10 September

The Ombudsman was re-elected as Secretary of the IOI

### 13 December

With the departure of the last civil service seconded, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance



*Signing of MAA*



*9th AOA Conference*

## 2005

### 24 October

A "Memorandum of Administrative Arrangements" ("MAA") was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office

### 28 November - 1 December

The Ombudsman hosted the 9th AOA Conference



*IOI Board Meeting*

## 2008

### 5-8 November

The Ombudsman hosted the Board of Directors Meeting of the IOI

## 2009

### 1 April

Fourth Ombudsman Mr Alan Lai Nin, GBS, JP assumed office

### 11 June

The Ombudsman was elected to the Board of Directors of the IOI



*Fourth Ombudsman Mr Alan Lai Nin, GBS, JP*



# The Ombudsman's Review



This report, my first, ushers in the twenty-first anniversary of ombudsmanship in Hong Kong. Over the decades, our Office has endeavoured to raise the quality of service and the standard of administration in the public sector. Thanks to community support and Government compliance, we have had quite significant successes.

## Breakthrough on Long-standing Problems

The Hong Kong Post Circular Service delivering on a massive scale unaddressed circular mail, largely commercial advertising, has annoyed many recipients as “nuisance”. On our recommendation, Post Office is about to make it possible for prospective recipients to opt out.

Unauthorised building works (“UBWs”) in New Territories “small houses” have long been a problem. We completed a direct investigation in 2004 and recommended *inter alia* that the Administration develop a realistic plan for effective enforcement and explore the feasibility of rationalising existing UBWs that are safe, not serious and therefore tolerable, subject to a penalty payment. At long last, the Administration has mapped out a broad framework on this basis.

The Hong Kong Examinations and Assessment Authority had been refusing applications from candidates for copies of marked examination scripts. They argue that such documents were not useful to the applicants and handling such applications would place an excessive burden on the Authority. After prolonged exchanges, we convinced the Authority that its refusal was in breach of the Personal Data (Privacy) Ordinance, under which candidates should have access to marked examination scripts containing their personal data. As from 2009, candidates may obtain their marked examination scripts.

The Small Claims Tribunal Registry used to issue an order or award to the litigating parties about eight days after the order or award was made by the Adjudicator. As the time limit for appeal or setting aside of the order or award is seven days, this posed a problem for litigating parties. In 2004, we handled a related complaint and recommended that the Judiciary Administrator speed up the process. The Judiciary Administrator has since set up a working group to tackle the problem and eventually reduced the average time for issuing an order or award from about eight days to less than five.

These examples illustrate the wisdom of the time-honoured adage: where there is the will, there is a way. It just needs the willingness to “think out of the box”.

### Catalyst for Change

It is encouraging to see some departments initiating improvement in the course of our investigation. In this context, we are a catalyst for reform.

One example is our direct investigation on the Regulatory System of Lifts. In response to our inquiries, the Electrical and Mechanical Services Department promptly tightened monitoring of registered contractors’ examination of lifts and set a time limit for staff to urge the contractors to rectify any irregularities identified during inspections.

Similarly, immediately after we initiated inquiries into the Effectiveness of Administration of the Code on Access to Information, the Constitutional and Mainland Affairs Bureau enhanced efforts in training for civil servants in implementation of the Code and publicity for educating citizens on their right of access to information.

I commend the positive and proactive attitude of such departments and bureaux.

### Hard Nuts for Cracking

However, there are issues requiring inter-departmental action which tax individual enforcement agents and which, we believe, could be effectively tackled by joint action under District Administration. This points to the need for greater empowerment of District Councils and District Offices, to reinforce their mandate for resolving local problems. Examples are roadside skips, illegal parking of bicycles and on-street promotional activities, all of which cause considerable aggravation to the community.

I have urged the Administration to give this early and serious consideration.

Departments at times come under fire due to the shortage and frequent turnover of short-term contract staff. The Joint Offices, manned by the Buildings Department and the Food and Environmental Hygiene Department, are a particular case in point. Their investigation of seepage complaints chronically suffers delays and disruption for this very reason.

By insisting on engaging staff on such terms and not addressing their wastage, Government is practically creating a rod on its own back. Thus, a scheme intended to offer a convenient “one-stop service”, the Joint Offices have sadly become a “whipping boy”. Meanwhile, the two departments concerned continue to be targets for complaints.

### Public Misconception

Complaints inevitably have to be assigned to different investigators for inquiry and analysis. Some complainants dissatisfied with the outcome of their case blame it on the individual case officers. In fact, findings from investigation and reports are invariably put to me personally for scrutiny and final decision before issue. Conclusion and recommendations are, therefore, not the views of the case officer but mine and thus the institutional stance.

There is no case for criticising or complaining against the case officers. Complainants with fresh arguments or new evidence are welcome to seek a review of my decision.

Ultimately, complainants have recourse to the Courts for judicial review.

### Outcome of Jurisdictional Review

The Administration has come to a conclusion on our jurisdictional review, mentioned in our Annual Reports since 2006. It has clarified its stance *inter alia* on the restrictions on The Ombudsman’s powers *vis-à-vis* personnel matters and Government decisions on land transactions. Four of the eight public bodies we recommended for inclusion in The Ombudsman’s schedule will be added to my purview.

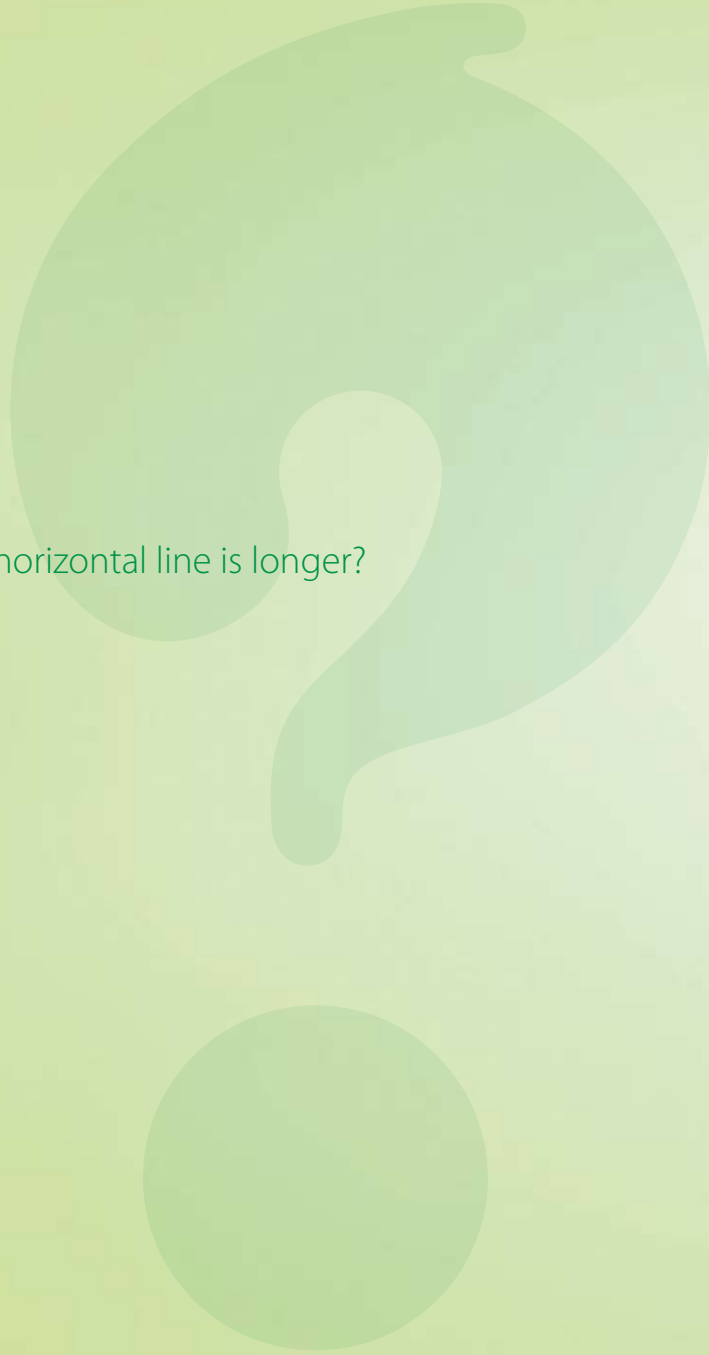
This is likely to raise our caseload. We will watch the effect on our manpower resources. Whatever the outcome, I pledge my best endeavours to our mission for improvement to public administration and promotion of fairness.

Alan N Lai  
The Ombudsman  
31 March 2010



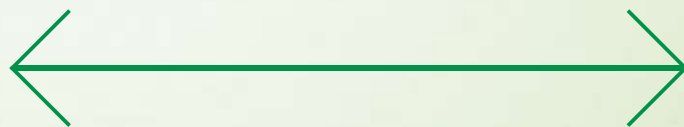
“ They are identical ! ”

Which horizontal line is longer?





Chapters



# Chapter 1 Our Role and Jurisdiction

1.1 Established in 1989 by The Ombudsman Ordinance (“the Ordinance”), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman is entering its 21st year as the city’s independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. In this context, we foster good public administration for fair and open, responsive and responsible governance.



Fig. 1.1 Enquiry Counter

## Jurisdiction

1.2 The Ombudsman has powers to investigate complaints of maladministration by the Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). The Ombudsman may also, in the absence of complaints, initiate direct investigation into areas of systemic maladministration and significant issues in the public interest.

1.3 Broadly speaking, “maladministration” means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority;

unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others. It is defined in detail in section 2 of the Ordinance.

1.4 The Hong Kong Police Force, the Independent Commission Against Corruption and two other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 1**) are not subject to investigation, except for cases of non-compliance with the Code on Access to Information <sup>1</sup>.

<sup>1</sup> The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Independent Commission Against Corruption and the Hong Kong Monetary Authority.



## Actions Not for Investigation

1.5 The Ombudsman's purview is not without prohibition. Cases related *inter alia* to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.

## Restrictions

1.6 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation. For example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are also detailed at **Annex 2**.

1.7 Nevertheless, in some cases, The Ombudsman has discretion whether or not to conduct, or discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

## Jurisdictional Review

1.8 Between 2007 and 2008, we conducted a comprehensive review of our jurisdiction and made some recommendations to the Administration. Consequently, the Administration has agreed to add to Schedule 1 four public bodies in the year to come. They are the Auxiliary Medical Service, the Civil Aid Service, the Consumer Council and the Estate Agents Authority. It has also clarified its stance that The Ombudsman's jurisdiction does not cover:

- (a) complaints from non-Hong Kong residents about actions taken by a Government office outside Hong Kong, such as the Economic and Trade Offices;
- (b) personnel matters, including any administrative aspects thereof; and
- (c) decisions concerning the imposition or variation of any condition in land transactions, other than administrative aspects surrounding such decisions (e.g. delay in handling land grant applications).

1.9 In preparation for the extension of our jurisdiction, we have already started close liaison with those organisations to be brought under The Ombudsman's purview and arranged briefing sessions to exchange views on our work.

# Our Investigation Procedures

## Complaint Handling

### Modes of Complaint

2.1 Complaints may be lodged in person, by letter, by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple initial cases involving not more than two organisations.

2.2 We also accept complaints *via* email. However, for security of the information, they must be digitally signed under proper electronic certification. Otherwise, we have to respond by post to guard against disclosure, as we are required by law to maintain stringent secrecy under penalty of a fine and imprisonment.

### Complainants' Representation

2.3 For a complaint made by an individual, he/she should normally be the person aggrieved unless that person is unable to act for himself/herself (**para. 1.6**).

2.4 For a complaint made on behalf of a body corporate, the complainant has to satisfy The Ombudsman that the body corporate has authorised him/her as its representative (section 10(1)(da) of the Ordinance). The Ombudsman will allow legal representative if he thinks it justified.

### Topical Complaints

2.5 From time to time, we receive complaints from more than one person, more or less concurrently, about a particular social issue or current topic relating essentially to the same action or decision by the organisation(s) concerned. We term such cases "topical complaints" (previously known as "serial complaints") to distinguish them from complaint cases on disparate issues or topics, so as to reflect more accurately our caseload and the frequency of complaint against different organisations.

## Assessment

2.6 Our Assessment Team screens all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Essential information includes the organisation and the matter under complaint, basic details of time and persons involved as well as grounds for grievance.

2.7 Under our Duty Officer Scheme, investigation officers are available to receive new complainants to secure the above information and to brief them on our procedures and restrictions.

2.8 Where The Ombudsman decides not to pursue a case, we aim to notify the complainant of the reason(s) within 15 working days (see **Annex 3** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous or unidentifiable, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may prompt topics for direct investigation (see **paras. 2.20 – 2.21**).

2.9 Some complaints may be "screened out" because there is no *prima facie* evidence of maladministration. However, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services, as if we were social workers or counsellors.

2.10 On appeal by complainants of cases "screened out", the Assessment Team will "re-assess" such cases for reasons to "re-open" the matter. The Ombudsman will then decide whether or not to screen them in.

**Fig. 2.1**

Preliminary Inquiries	
Type	Method
INCH	With the complainant's consent, a relatively simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request specific information from the organisation, monitors progress and scrutinises the reply. Where it is not satisfactory, we may take up the case by RAC or full investigation.
RAC	The Office collects key facts relating to the case. If the matter can be fairly and fully explained, we will present the findings with observations to the complainant and make suggestions to the organisation concerned for remedy and improvement where necessary. If further inquiries are called for, we may conduct a full investigation (see <b>para. 2.15</b> ).

2.11 Complaints "screened in" go to one of our six investigation teams for preliminary inquiries, resolution by mediation or full investigation.

### **Preliminary Inquiries**

2.12 We often conduct preliminary inquiries before determining whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or take the form of Rendering Assistance/Clarification ("RAC"), as outlined in **Fig. 2.1**.

### **Mediation**

2.13 With the voluntary consent of both the complainant and the organisation concerned, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution. Our trained investigators act as impartial mediators.

2.14 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate preliminary inquiries or a full investigation afresh. This is to ensure objective processing not influenced by prior knowledge from the mediation meeting.

### **Full Investigation**

2.15 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.16 This is an extensive and intensive process of probing to establish the facts. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of Professional Advisers, who are all experts with good standing in professional fields (see **Annex 4**).

2.17 We will invite comments on our preliminary observations and views from any organisation or individual that may have been criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head of the organisation concerned for implementation of our recommendations.

2.18 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 5**).

### Review

2.19 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. Such requests first go through the original investigator, who will examine the complainant's grounds for review and submit his or her view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on any fresh evidence or new angles before submitting the request to the relevant Assistant Ombudsman. The latter will seek a directive from The Ombudsman, via the Deputy Ombudsman, as to whether the request should be entertained.

### Direct Investigation

2.20 Under the Ordinance, direct investigations ("DIs") in the absence of complaints enable The Ombudsman to review matters of moment at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

### Selection of Issues

2.21 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.8**).

### DI Assessment

2.22 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation direct. If such assessment points to the need for further study, we will formally notify the head of the organisation and initiate a DI.

2.23 Where our DI assessment finds no significant maladministration or the organisation concerned has made proactive improvement, we will not initiate a DI. We will simply conclude our study and offer our findings to the organisation. Where appropriate, we make recommendations for improvement.

### Investigation Methodology

2.24 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our established practice to declare publicly our initiation of DIs and openly invite views from relevant sectors and experts as well as the community at large, as the issues investigated tend to have wide impact on the public.

2.25 In the course of our investigation, we also often meet with senior officers of the organisation to discuss face-to-face our preliminary findings. Such exchanges are useful in clarifying points for possible incorporation into our report and furthering better insight into the issues as well as greater mutual understanding.

### Implementation of Recommendations

2.26 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. These may even include comments on policies found outdated or inequitable, although policies *per se* are, strictly speaking, not matters for our investigation.

2.27 Heads of organisations have a duty to report at regular intervals their progress of implementation of our recommendations. We will monitor and keep track by correspondence.

2.28 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertheless, where an organisation refuses to accept any of such recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

## Secrecy Requirement and Publication of Reports

2.29 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.30 In this connection, it is our general practice not to respond to any question from third parties on individual complaints. However, where it is in the public interest to do so, The Ombudsman may publish at media conferences anonymised reports on complaint investigation, or otherwise answer media enquiries on such investigations, again hiding names and other personal data.

2.31 Reports on DI are invariably announced at media conferences. Such reports also form part of the library stock in our Resource Centre and on our webpage for public reference (see **Chapter 6**).

## Essence of Our Investigation

2.32 Our object in investigation is to establish the facts of a case and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of a case.

### Enquiries and Complaints Processing

3.1 We received 13,789 enquiries and 4,803 complaints this year. **Fig. 3.1** shows the corresponding figures in the past five years.

**Fig. 3.1**

Enquiries and Complaints Received			
Year	Enquiries	Complaints	
		only for us*	including those copied to us
2005/06	14,633	3,828	4,266
2006/07	15,626	5,606	6,114
2007/08	12,169	4,987	5,419
2008/09	14,005	5,386	5,945
2009/10	13,789	4,803	5,329

\* These figures exclude “complaints to others copied to us”: see Glossary of Terms in Annex 5. It was termed “potential complaints” before 2006/07.

3.2 Apart from the complaints received during the year, we had 970 cases brought forward from last year and 96 cases “re-opened”<sup>1</sup>, giving a total of 5,869 complaints for processing this year. A breakdown of our caseload for the past five years is in **Table 1**.

<sup>1</sup> This category captures those cases which had been closed in previous years for being unpursuable (for example, the complainant was untraceable) but which subsequently became pursuable (the complainant contacted us again) and thus were re-opened for inquiry in the current year. It also includes cases that had been concluded after preliminary inquiry but subsequently reviewed by way of full investigation.

### Topical Complaints

3.3 In recent years, complaints regularly came from groups fuelled by some social or topical issues attracting public attention or affecting a section of the community. The trend has continued this year, yielding a total of 393 topical complaints, against the 853 last year. The “minibond” saga, which spawned some 650 complaints last year, remained the major cause for topical complaints this year, resulting in 267 cases. Other less popular issues included the acquittal by the Court of a foreign domestic helper prosecuted for some serious misconduct and a Regional Transfer scheme offered by the Housing Department in a housing region. The former issue triggered some 25 complaints from employers of foreign domestic helpers against Government’s policy on the subject, while the latter issue attracted slightly under 20 complaints from tenants of the housing region concerned who considered the scheme unfair.

3.4 As noted in our last report, topical complaints invariably inflate our complaints statistics and thus affect the overall statistical pattern. To reflect our caseload more accurately, we began last year to indicate the number of topical complaints where due (see **Table 1**).

### Mode of Lodging Complaints

3.5 Topical complaints also affect the pattern of the mode of lodging complaints. Although email remained

**Fig. 3.2**

<b>Mode of Lodging Complaints</b>					
<b>Mode</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
In person	231	412	251	370	413
In writing –					
by complaint form	613	586	486	1,300	863
by letter through post	1,303	1,002	1,829	936	870
by fax	863	836	753	890	764
by email	902	2,461	1,380	1,515	1,362
By telephone	354	309	288	375	531
<b>Total</b>	<b>4,266</b>	<b>5,606</b>	<b>4,987</b>	<b>5,386</b>	<b>4,803</b>

Note: Figures from 2006/07 onwards exclude “complaints to others copied to us”.

the most popular channel, as **Fig. 3.2** shows, complaints lodged by our pre-paid complaint forms significantly decreased in both absolute number and proportion, from 1,300 (24.1%) last year to 863 (18.0%) this year. This was because the bulk of cases lodged by complaint forms last year had been topical complaints. This year, such complaints were far fewer and came in mostly by email.

3.6 Meanwhile, complaints lodged in person has increased in the past three years, from 251 (5.0%) in 2007/08 to 370 (6.9%) last year and 413 (8.6%) this year. Similarly, complaints by telephone rose in these three years from 288 (5.8%) to 375 (7.0%) and then 531 (11.0%). Both modes involve direct contact between the complainant and our staff.

### **Complaints Handled**

3.7 The number of complaints received this year returned to a level comparable to that in 2007/08, at 4,803, being a drop of 583 (11%) from last year’s 5,386. A significant contributing factor was the decrease of 460 topical complaints (see **para. 3.3** above).

3.8 Among the 5,869 complaints for processing this year (see **para. 3.2** above), we concluded 4,775 cases:

**Fig. 3.3**

<b>Complaints Concluded in 2009/10 *</b>		
	<b>Cases Concluded</b>	<b>Percentage</b>
Cases Pursued	2,215	46.4%
Cases Screened Out #	1,114	23.3%
Cases Not Pursued @	1,446	30.3%
<b>Total</b>	<b>4,775</b>	<b>100%</b>

\* A more detailed breakdown of the cases is given in Table 1.

# Cases not investigated due to restrictions by law or jurisdictional limitation (see Chapter 1).

@ Cases not pursued for reasons explained in para. 3.11.

3.9 We processed most cases by RAC (“Rendering Assistance and Clarification”), concluding 1,850 (83.5%) of those pursued in the year. Generally, we seek information and comments in writing from the complainee organisation before concluding an RAC case. For simple and straightforward cases, we may conclude a case after verbal clarification with the organisation under complaint or on material on our files or information available to the public. However, this year, with RAC processing, we have placed greater emphasis on securing direct from the complainee organisation information specific to the complaint.

3.10 We concluded 126 cases by full investigation, more than double the number in previous years, if the 187 topical complaints last year are not counted individually since the basis of complaint and report was largely similar. We attempted four cases by mediation, with success in three.

3.11 We do not pursue some complaints if they are *withdrawn* by the complainant or *discontinued* by our Office after initial inquiry. Yet others are *not undertaken* because further inquiry is considered unnecessary for the following reasons:

- a *prima facie* case of maladministration is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

**Fig. 3.4**

Complaints Pursued and Concluded					
	2005/06	2006/07	2007/08	2008/09	2009/10
Preliminary Inquiries	1,758	1,643	1,938	2,437 [224]	2,086 [302]
<i>INCH</i>	185	143	81	148	236
<i>RAC</i>	1,573	1,500	1,857	2,289 [224]	1,850 [302]
Full Investigation	55	71	38	247 [187]	126
Mediation	12	2	1	0	3
<b>Total</b>	<b>1,825</b>	<b>1,716</b>	<b>1,977</b>	<b>2,684 [411]</b>	<b>2,215 [302]</b>

[ ] number of topical complaints included in the total figure (not available before 2008/09).

**Fig. 3.5**

(a) Causes for Complaint in the Last Five Years					
Nature of allegation/maladministration identified	% among all concluded cases*				
	2005/06	2006/07	2007/08	2008/09	2009/10
Error, wrong decision/advice	23.8%	46.5%	24.3%	29.4%	38.4%
Failure to follow procedures, delay	14.7%	11.0%	13.3%	14.3%	18.6%
Disparity in treatment, unfairness, selective enforcement	7.3%	7.4%	25.4%	14.1%	7.2%
Negligence, omissions	11.1%	8.0%	8.3%	7.6%	7.2%
Ineffective control	10.0%	6.5%	6.7%	16.2%	7.0%
Faulty procedures	4.8%	5.7%	5.4%	4.2%	5.2%
Lack of response to complaint	6.4%	5.0%	5.3%	5.1%	5.1%
Staff attitude	5.8%	4.7%	5.2%	3.7%	5.0%
Abuse of power	4.0%	3.2%	4.4%	2.9%	2.2%
Others	12.1%	2.0%	1.7%	2.5%	4.1%

\* The number of cases concluded in 2005/06, 2006/07, 2007/08, 2008/09 and 2009/10 totalled: 4,309, 5,340, 4,644, 5,701 and 4,775 respectively. They included all cases pursued, screened out and not pursued (see Table 1). Figures since 2006/07 exclude "complaints to others copied to us".



**Fig. 3.5**

<b>(b) Forms of Maladministration Substantiated in the Last Five Years</b>					
<b>Nature of allegation/maladministration identified</b>	<b>% among all acts of maladministration substantiated*</b>				
	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
Failure to follow procedures, delay	30.6%	31.7%	16.1%	4.2%	26.5%
Error, wrong decision/advice	13.9%	12.2%	29.1%	14.5%	24.4%
Negligence, omissions	11.1%	9.8%	6.45%	3.3%	12.7%
Disparity in treatment, unfairness, selective enforcement	2.8%	2.4%	12.9%	69.7%	6.4%
Ineffective control	19.4%	14.6%	6.45%	1.3%	6.4%
Lack of response to complaint	11.1%	17.1%	16.1%	0.8%	6.4%
Faulty procedures	5.6%	9.8%	6.45%	2.9%	4.3%
Staff attitude	2.8%	0%	6.45%	0.4%	4.3%
Abuse of power	2.8%	0%	0%	0.4%	4.3%
Others	0%	2.4%	0%	2.5%	4.3%

\* The number of acts of maladministration substantiated or partially substantiated after full investigation in 2005/06, 2006/07, 2007/08, 2008/09 and 2009/10 totalled: 36, 41, 31, 241 and 94 respectively.

### Major Causes for Complaint

3.12 As **Fig. 3.5(a)** shows, the causes most often mentioned by complainants this year were similar to those in previous years, with the five topping the list being:

- error, wrong decision or advice;
- failure to follow procedures, delay;
- disparity in treatment, unfairness, selective enforcement;
- negligence, omissions; and
- ineffective control.

However, “ineffective control” came down from second place last year to the fifth, following the drop in topical complaints relating to minibonds.

3.13 Based on full investigations, the top three types of act of maladministration substantiated or partially substantiated were:

- failure to follow procedures, delay;
- error, wrong decision or advice; and
- negligence, omissions.

They were basically the same as those for complaint but “failure to follow procedures, delay” overtook “error, wrong decision/advice” as the form of maladministration most frequently substantiated. **Fig. 3.5(b)** gives details.

### Most Popular Targets of Complaint

3.14 **Table 4** is a full list of scheduled organisations and the number of enquiries and complaints we received on them during the year. The figures include all complaints received, whether pursued or not. However, for the purpose of determining the organisations most frequently under complaint, we count only complaints having a *prima facie* case and hence pursued by us; we exclude those screened out or otherwise not pursued. On this basis, we have the league of the “top ten” this year at **Table 3**.

Fig. 3.6

Substantiation of Complaints Concluded by Full Investigation		
Outcome	No. of Complaints	Percentage
Substantiated	32	25.4%
Partially substantiated	38	30.1%
Substantiated other than alleged	5	4.0%
Unsubstantiated	51	40.5%
<b>Total</b>	<b>126</b>	<b>100%</b>

Fig. 3.7

Outcome of RAC Cases		
Outcome	No. of Complaints	Percentage
Remedial Action Required	410	22.2%
No evidence of maladministration	1,396	75.4%
Inconclusive	44	2.4%
<b>Total</b>	<b>1,850</b>	<b>100%</b>

3.15 The Food and Environmental Hygiene Department and the Buildings Department, the two departments staffing the Joint Office for seepage complaints, stood at the first and third positions of the list, with the Housing Department in between. As a result of the large number of topical complaints about “minibonds” received and pursued (see **para. 3.3**), the Hong Kong Monetary Authority and the Securities and Futures Commission featured in the list this year, ranking fourth and fifth respectively.

3.16 The remaining five organisations were also on the “top ten” league last year, with some change to their relative positions. The Immigration Department and the Home Affairs Department have dropped out this year.

## Outcome of Inquiries

3.17 We concluded 126 complaints by full investigation, with 75 or 59.5% substantiated, partially substantiated or substantiated other than alleged<sup>2</sup>, compared to 65% last year (topical complaints excluded). The outcome of our full investigations is summarised in **Fig. 3.6**.

3.18 Complaints concluded after preliminary inquiries are not classified by their outcome. However, where remedial action has been taken by or suggested to the complainee organisation, it is an indicator that there is some substance in the complaint. As shown in **Fig. 3.7**, among the 1,850 cases concluded by RAC, remedial action was either taken by or suggested to the organisations concerned in 410 or 22.2% of the cases. This compares with 15.6% (357 cases) and 34.5%<sup>3</sup> (640 cases) in the two previous years. More details are given in **Table 8**.

## Direct Investigation

3.19 With the support of two Direct Investigation teams, we were able to complete more direct investigations in the past year: seven direct investigations and eight direct investigation assessments (or “mini-direct investigations”), with another six direct investigations in progress at the end of the year. These are detailed in **Fig. 3.8**.

## Recommendations

3.20 We made 141 recommendations on completion of 126 full investigations<sup>4</sup>, mostly on complaints that were substantiated, partially substantiated or substantiated other than alleged. As a general practice, we do not repeat recommendations if the organisation has already taken appropriate remedial action and adequate improvement measures or where we have made the

<sup>2</sup> See Glossary of Terms in Annex 5.

<sup>3</sup> The exceptionally high percentage was mainly due to remedial action suggested in a group of over 300 topical complaints.

<sup>4</sup> Comprising 127 recommendations from 58 complaints that were substantiated, partially substantiated or substantiated other than alleged after full investigation; and 14 recommendations from 10 unsubstantiated complaints.

necessary recommendations in similar cases. Apart from fully investigated complaints, 62 recommendations were made after seven direct investigations, giving a total of 203 recommendations. So far, 195 (96.1%) of them have

been accepted by the organisations for implementation and 6 (3.0%) are still under consideration. Two have been dropped subsequently: one for practical reasons accepted by us and the other overtaken by events.

**Fig. 3.8**

<b>(a) Direct Investigation Reports Completed in 2009/10</b>	
<b>Date</b>	<b>Subject</b>
27 May 2009	System for Development of Question Papers in Public Examinations
2 June 2009	Procedures for Processing Chained-transactions Involving Transfer/Retention of Vehicle Registration Marks
24 August 2009	Housing Department's Handling of Complaints Involving Claims
24 August 2009	Regulatory System of Lifts
23 October 2009	Granting of Disability Allowance and Processing of Appeals by Social Welfare Department
22 January 2010	Checking of Eligibility for Subsidised Public Hospital and Health Services
22 January 2010	Effectiveness of Administration of Code on Access to Information
<b>(b) Direct Investigation Assessments Completed in 2009/10</b>	
<b>Date</b>	<b>Subject</b>
16 April 2009	Emergency Handling of Patients near HA Hospitals
14 July 2009	Administration of Community Investment and Inclusion Fund
14 December 2009	Floor Numbering of Buildings
14 January 2010	Support for Discharged Mental Patients
19 January 2010	Payment of Care Home Fees
24 February 2010	Appointment Arrangements and Waiting Times at Specialist Clinics
25 February 2010	Installation, maintenance and repairs of metal gates of Government buildings under the purview of Architectural Services Department
29 March 2010	Government Injection into MPF and ORSO Accounts
<b>(c) Direct Investigations in Progress</b>	
<b>Date Declared</b>	<b>Subject</b>
19 March 2009	Procedures for Enforcement of Driving-offence Points System
2 June 2009	Fire Safety Regulatory Measures
23 June 2009	Allocation and Monitoring of Use of Site of Hong Kong Schools Sailing Association at Tai Mei Tuk
8 July 2009	Unauthorised Building Works in New Territories Exempted House
28 September 2009	Management of Non-Emergency Ambulance Transfer Service ("NEATS") by Hospital Authority
21 January 2010	Safety of Public Light Bus ("PLB") Operation

Fig. 3.9

(a) Response Time for Acknowledgement/Initial Assessment			
Year	Response Time		
	Within 5 working days (target : 80%)	Within 6-10 working days (target : 20%)	More than 10 working days
2005/06	99.75%	0.22%	0.03%
2006/07	99.90%	0.05%	0.05%
2007/08	99.91%	0.06%	0.03%
2008/09	99.80%	0.18%	0.02%
2009/10	99.89%	0.11%	0.00%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target : 70%)	Within 11-15 working days (target : 30%)	More than 15 working days
2005/06	40.9%	57.3%	1.8%
2006/07	90.9%	8.7%	0.4%
2007/08	88.1%	10.3%	1.6%
2008/09	77.2%	19.6%	3.2%
2009/10	78.9%	16.3%	4.8%

(c) Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target : 60%)	Within 3-6 months (target : 40%)	More than 6 months
2005/06	56.0%	41.0%	3.0%
2006/07	57.1%	40.3%	2.6%
2007/08	56.5%	41.5%	2.0%
2008/09	65.9 %	32.3%	1.8%
2009/10	54.7%	43.2%	2.1%

3.21 For cases handled by RAC, we also make suggestions for remedy or systemic improvement where due. This year, 164 such suggestions were made, as with last year. Three organisations received significantly more (50% or more) such suggestions this year compared with last year: the Hospital Authority, the Housing Department

and the Leisure and Cultural Services Department. Three other organisations received significantly less (by at least 50%) such suggestions: namely, the Transport Department, the Buildings Department and the Water Supplies Department. A breakdown of the suggestions by organisations is in **Table 8**.

## Our Performance

3.22 Our performance pledges and records of our achieving them are detailed in **Annex 3**. This year we continued to meet our pledges fully in respect of answering enquiries by telephone and in person and in arranging group visits and talks. For enquiries in writing, we answered 86.3% of them in five working days and 13.3% in six to ten working days. In one case (0.4%) we were unable to meet our pledge of answering the enquiry in ten working days.

3.23 On complaint handling, we acknowledged and completed initial assessment of almost all complaints received within five working days and none beyond the pledged timeframe of ten working days (see **Fig. 3.9(a)**). For processing cases outside jurisdiction or under restriction, we exceeded the target timeframe of 15 working days in 4.8% of the cases, compared with 3.2% last year (see **Fig. 3.9(b)**).

3.24 For cases screened in for further processing, 54.7% of the cases were concluded within three months, against the pledge of 60% and last year's performance of 65.9%. There were 2.1% of the cases, as opposed to 1.8% last year, not concluded within our pledged timeframe of six months for completion of investigation (see **Fig. 3.9(c)**). This increase of cases concluded beyond the three-month and six-month timelines was due to our greater emphasis this year on securing specific information direct from the complainee organisations rather than relying on material on our files or in the public domain, even though such were available more readily (see **para. 3.9** above). We will endeavour to improve our efficiency in case handling.

3.25 A number of factors affect our processing time of complaints, often not within our control. These include:

- complexity of the case;
- voluminous documents for scrutiny and analysis;
- new developments mid-stream;
- complainee organisations requiring more time for response to our inquiries; and
- parties challenging our findings.

## Overview

3.26 The number of complaints received this year slightly dropped after the surge last year, to some extent a result of the fluctuation in topical complaints. We took the opportunity to enhance the quality of our inquiries by seeking more rigorously information direct from organisations concerned, conducting more full investigations and putting greater efforts in attempting mediation. We will continue to review our performance with a view to strengthening our output as well as efficiency of our services.

## Chapter 4 Reward and Challenge

### Enhancing Quality Administration

4.1 Suggesting ways to prevent recurrence of the type of maladministration identified through our inquiries is an important part of our work. This enhances the quality of service and standard of public administration. On conclusion of our inquiries, we critically examine if there is room for improvement in the administration of the organisation concerned and make recommendations and suggestions where appropriate. As noted in **Chapter 3**, we have made 141 recommendations on conclusion of our full or direct investigations this year and 164 suggestions on completion of cases by way of RAC.

4.2 The Administration assists in our investigations and accepts most of our recommendations. Every year when our Annual Report is tabled in the Legislative Council, the Administration presents a Government Minute summarising the complaints which we investigated, our findings and recommendations and their progress of implementation.

4.3 A welcome phenomenon is that often organisations under complaint initiate improvement measures themselves upon our referral of a complaint to them. Irrespective of the origin, such improvement measures result in higher quality in the operations and services of the organisations. Examples noted in the year include stronger measures for combating proliferation of unauthorized building works in a housing estate, revised practice for providing re-marked examination scripts to candidates, setting timelines for issuing interim and final replies to enquirers on refund of water account deposits, shorter timespan for issuing orders of the Small Claims Tribunal and facilities in public libraries for issuing receipts on payment of charges.

4.4 Most of these measures fall into the following areas:

- guidelines for clarity, consistency or efficiency in operation;
- better handling of public enquiry/complaint;
- better client services; and
- clearer information to the public.

More details and further examples are given in **Annex 6**.

4.5 At times, after thorough consideration, organisations may find it difficult to implement some of our suggestions. Where we consider the difficulty to be genuine, we will not insist on strict implementation of our suggestions but request the organisations to develop suitable alternatives for the improvement intended by our original suggestions. It is not our role to work out solutions for organisations but we are always ready to assist by offering suggestions.

### Code on Access to Information

4.6 Apart from investigating into acts of maladministration generally, I am specifically required under The Ombudsman Ordinance to inquire into complaints of breach of the Government's Code on Access to Information. The Code requires departments to provide information they hold to the public upon request, unless there are valid reasons as specified in the Code. It is an important vehicle to ensure open and accountable government and to protect the citizen's civil and political rights.

4.7 As reported last year, there was still a general lack of understanding, at times serious misinterpretation, of the Code among Government departments, resulting in refusal of requests for information without giving any reasons or with reasons not specified in the Code. This year, we received a total of 43 Code-related complaints, a significant increase from 24 the year before. To assist Government in appreciating the problem and identifying improvement measures, a direct investigation was conducted during the year.

4.8 Responding to our investigation, the Constitutional and Mainland Affairs Bureau ("CMAB") introduced a series of measures to step up promotion of and training on the Code within the Administration. Some of them were self-initiated shortly after commencement of the investigation and some on our recommendation on its conclusion. These measures included provision of clearer guidance, such as Frequently Asked Questions and precedents for reference, for the staff of bureaux and departments as well as more frequent training. CMAB has also stepped up promotion of the Code in the community, through publicity in the electronic media, on public transport and on the webpages of bureaux and departments.

### Addressing Systemic Issues

4.9 In the course of our complaint investigation, we pay particular attention to whether the deficiencies identified stemmed from deeper systemic issues. If so, we will bring such issues to the attention of the heads of the organisations or policy bureaux concerned and, where justified, to the Central Administration. Where such issues merit further probing, we will conduct a direct investigation.

### Compartmental Mentality

4.10 One significant problem we have found is the compartmental mentality of some Government departments. They tend to interpret departmental roles and responsibilities narrowly and are unable or unwilling to view matters from a wider perspective. They fail or refuse to see themselves as arms of the one and the same Government. Such mentality invariably results in inaction and poor inter-departmental coordination. Some years ago, our 2005 Annual Report highlighted the classic "laundry case", in which five departments were all reluctant to take action against the environmental nuisance and eyesore of laundry being dried in public places. Each of

them interpreted their responsibilities restrictively, hence circumscribing their jurisdiction and circumventing action. Regrettably, such mentality persists in some departments still.

4.11 In the direct investigation concluded this year on Housing department's Handling of Complaints Involving Claims, we found the Department to consider a complaint involving claims merely as a claim. Since claims were dealt with by its insurer on the advice of the loss adjuster, the Department saw no need for it to look further into the complaint, forgetting that it had the duty to find out the cause of the complaint and areas for improvement in services to residents in public housing estates.

4.12 In a case handled during the year, the delineation of responsibility between the Lands Department and the Buildings Department for enforcement against unauthorised building works in the New Territories depended on whether the works in question were considered as "works in progress". Because of this, there was scope for no action by both Departments depending on their classification of the works in this context. A compartmentalised mentality could easily lead to inaction by Government against such unauthorised works. A direct investigation to examine this issue more thoroughly is now in progress.

### Accountability

4.13 Another area of concern is the tendency observed in some cases where the management too readily attributed fault or error to frontline staff without tracing, or even considering, supervisory accountability. In a case of delay by the Food and Environment Hygiene Department ("FEHD") in handling a seepage complaint, an Environmental Nuisance Investigator ("ENI") had conducted a leakage test on some premises but upon resignation shortly after, did not report this to his supervising Senior Health Inspector ("SHI"). In responding to our inquiries, FEHD readily admitted this ENI's omission but did not focus the SHI's responsibility for monitoring staff action. In the event, our inquiries found a lapse of almost four months' inaction on the case between the last report to the SHI by the ENI and the first report by his successor. Clearly, the SHI had not monitored the case closely enough or ensured staff's full work report upon departure.

4.14 In fact, we had observed the same lack of supervision in that FEHD district office in a similar case a year ago. At the time, FEHD assured us that a system had been put in place to help supervisors monitor cases. The system required frontline officers to enter into a computer form the dates of the major investigative steps taken on a seepage complaint and the supervisors to check the form periodically to ensure timely and proper follow-up action on the case. In the case mentioned above, we found the form almost completely blank except for the case reference, the complainant's address and the date of receipt and acknowledgement of the complaint. It is worrying that such glaring lack of supervision was not mentioned by the FEHD management when responding to our inquiries.

4.15 Were they not aware? Did they not think it worth mentioning? Whatever their view, we considered this a significant and serious breach of the principle of accountability.

#### **Water Seepage and the Joint Office**

4.16 In the report last year, we expressed concern over Government's slow progress in implementing the recommendations of our direct investigation, completed in March 2008, regarding the operation of the Joint Office ("JO") and the establishment of a tribunal for seepage complaints.

4.17 Some progress was observed this year. The JO has established clearer work procedures, monitoring mechanism and guidelines on division of work between the two departments staffing the JO, FEHD and the Buildings Department. Meanwhile, the Development Bureau has been seeking internal endorsement of an appropriate organisational structure and *modus operandi* for the JO. Separately, the Lands Tribunal has since July 2009 adopted mediation as a standard practice to resolve building management and maintenance disputes, including seepage disputes.

4.18 These are positive steps. We look forward to the Administration's further progress in reorganising the JO with a formal head empowered with proper authority over

staff and operational matters and in setting up a dedicated tribunal with powers to order seepage investigation and remedial repairs.

#### **Public Safety**

4.19 This year, our concern focused on a number of instances where public safety was apparently not given due attention by the authorities. Our direct investigation into the regulatory system of lifts, completed in the year, was initiated in the wake of a series of lift accidents the year before. Our study brought to light room for improvement in the regulatory system to protect public safety.

4.20 Road safety was another area that we examined. Renewed public outcry against the threat from speeding public light buses following a recent spate of traffic accidents prompted us to initiate a direct investigation into the action by the Transport Department to avert such risk. Meanwhile, we are continuing to study the procedures for enforcement of the Driving-offence Point System. This study deals with gaps in the System that allow drivers, who have accumulated sufficient Driving-offence Points to warrant suspension of their driving licences and should be presenting themselves for trial before a judge, to stay on the road and to endanger the public.

4.21 A third area of public safety that has engaged our attention was fire safety. While public memory of the tragic fire of Cornwall Court in 2008 was still fresh, we came across a case that fire safety is not a requirement for renewal of food business licences, even though it is a must for first application. This led us to declare a direct investigation into the measures taken by the Fire Services Department for ensuring fire safety in commercial buildings and FEHD practices in granting and renewing food business licences.

#### **Challenges from Parties**

4.22 Under The Ombudsman Ordinance, The Ombudsman is completely independent in discharging his duties. His decisions are final, whether on initiating inquiries or concluding a case. In this context, I take every decision with the utmost care and take disagreement with it most seriously.



**Fig. 4.1**

Review Cases						
Reason Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3		5			8
Decision upheld		58			1	59
						67

### Re-assessment of Cases

4.23 In my investigative work, my decisions fall broadly into two categories: whether or not we initiate an inquiry and what should be the outcome of our inquiry. Where I decide to screen out a case, it is because the matter under complaint falls outside my jurisdiction or because I am restricted by law from conducting an inquiry: e.g. complainants being untraceable, case subject to court proceedings, matters already time-barred.

4.24 Any disagreement with such a decision is, therefore, effectively a request for re-assessing whether I have jurisdiction over the case or whether I should have exercised my discretion to initiate an inquiry. In such cases, the Assessment Team will re-examine and re-assess. It will then present its recommendation to my Deputy for decision to proceed, or not. If there are grounds to support such a request, I will re-open the case for inquiry.

4.25 During the year we received 227 requests for re-assessment, 131 of which did not justify re-opening the case. The remaining 96 requests were subsequently re-opened for inquiry, mostly because the complainant had provided new evidence. Last year, the corresponding figures were 225 requests, with 161 declined and 64 re-opened for inquiry.

### Review of Cases

4.26 A decision on the outcome of an inquiry is based on the facts established and evidence collected in our investigation. Disagreement with the outcome amounts to a request for review of our findings and conclusion on the case. Previously, such requests were all regarded

as a “review case”. However, many such requests were simply expressions of dissatisfaction or disappointment with the outcome, with little supporting evidence or arguments or just rehash or repetition of the previous evidence or arguments. In this context, we have started this year to process differently. We first determine if the request should be entertained before we actually conduct a review. Where the complainant genuinely adduces *fresh evidence* or *new perspective* in support of his request for review, I will initiate a review. If so, the case will be thoroughly re-examined. If not, I will advise the complainant accordingly, with the reasons for my refusal to review.

4.27 A request for review is scrutinised by the relevant Chief Investigation Officer in consultation with the original case officer. If they take the view that the request is not supported by fresh evidence or new arguments, they will recommend to the relevant Assistant Ombudsman that the request not be entertained. With the latter’s endorsement, the recommendation will be presented to me through my Deputy for final decision.

4.28 If the team finds fresh evidence or new arguments for review, the original case officer or, if he is not available, another investigator will critically review the case and, where necessary, obtain further information or comments from the organisation under complaint. When this is completed, he will present his views to his Chief Investigation Officer before onward submission to the relevant Assistant Ombudsman for consideration. Findings and conclusion of a review are always scrutinised by my Deputy, before I take my final view.

4.29 This year, we received 147 requests for review, compared to 246 last year. I declined 80, because they presented no new evidence or argument. For the remaining 67 requests, I varied my decision in eight cases (seven last year) after review and upheld my original decision for the rest.

4.30 Occasionally, a complainant's disagreement with the outcome of our inquiries may be mixed with expression of dissatisfaction with the investigation officer or criticism of our procedures. The former is a request for review, while the points about my staff or our process may constitute a complaint against the officer or the Office (see **paras. 5.19 – 5.22** of **Chapter 5**). Such cases will first be passed to the head of office administration to see whether there are genuine grounds against the Office or the conduct of my staff. If so, the head of office administration will handle that aspect separately and independently for my adjudication. Meanwhile, the request for review will be processed in parallel by the Investigation Team as described in **paras. 4.26 – 28**.

4.31 However, if the head of office administration considers the allegations against my staff or the Office relate only to dissatisfaction with the findings or conclusions from our inquiries, the whole case will be processed by the Investigation Team as a request for review.

### **Persistent Complainants**

4.32 As with all other organisations that receive and handle complaints, our Office also faces a fair number of persistent complainants – some may be because their desired outcome differs from The Ombudsman's; others may just be pursuing their personal vendetta or agenda. A few can be quite unreasonable and verge on abusing the complaint system. In extreme cases, they may even abuse our staff, disrupt our operation and cause inconvenience to other users of our service. In dealing with such situations, we maintain our professionalism and focus on the substance of the complaint, always adhering firmly to the principles of impartiality and objectivity.

### **Complaints in Different Languages**

4.33 In July 2009 the Racial Discrimination Ordinance came into effect. We fully support this added protection of our citizens' civil rights and have made preparations for it (see **paras. 5.11 – 5.14** of **Chapter 5**). We have received a few complaints written in languages not readily comprehensible to us. Translation was required and processing would inevitably take longer. We are accumulating experience in handling such complaints and will endeavour to maintain our service standard as possible.

### **Judicial Review**

4.34 As noted above (**paras. 4.26 – 4.31**) a complainant not satisfied with my decision may request a review by me. Alternatively, he may seek a judicial review by the court.

4.35 This year, there was no new application for judicial review against The Ombudsman's decision. The three cases for judicial review last year failed to obtain leave. However, one has since appealed against the court's decision and obtained leave for review of The Ombudsman's decision regarding representation by legal representatives. The Office has filed an affirmation to the High Court and hearing has been set for September 2010.

### **Jurisdictional Review**

4.36 On 14 April 2009, the Director of Administration informed me that, among the eight organisations which my predecessor had recommended in her review for inclusion in Part I of Schedule 1 to The Ombudsman Ordinance, the Administration had agreed to including four, namely:

- Auxiliary Medical Service;
- Civil Aid Service;
- Consumer Council; and
- Estate Agents Authority.

As for the recommendations to relax certain restrictions on the investigative powers of The Ombudsman, the Administration considered them either unnecessary or inappropriate.

4.37 After putting the matter to the Legislative Council Panel on Administration of Justice and Legal Services on 27 April 2009, the Administration has obtained the approval of the Chief Executive in Council for the necessary legislative amendment to bring these four organisations into our jurisdiction. I understand that this is intended to take effect from July 2010.

## Overview

4.38 Our mission is to redress grievances and address issues arising from maladministration in the public sector. Our investigation is independent, objective and impartial. While we aim to bring about improvement in the quality of public administration and standard of service, we also help dispel misunderstanding or misconception of Government practices among complainants. We try our level best to be factual in our findings and fair in our conclusions. We do not mince words: we criticise or compliment, comment or commend without fear or favour always.

4.39 We are pleased to see our recommendations achieve our aim. It gives us greater pleasure still to see organisations concerned taking action to improve themselves. We take this as an index of a proactive and positive change of culture towards positive complaint management. We are gratified that we have been a catalyst for reform.

### Staffing

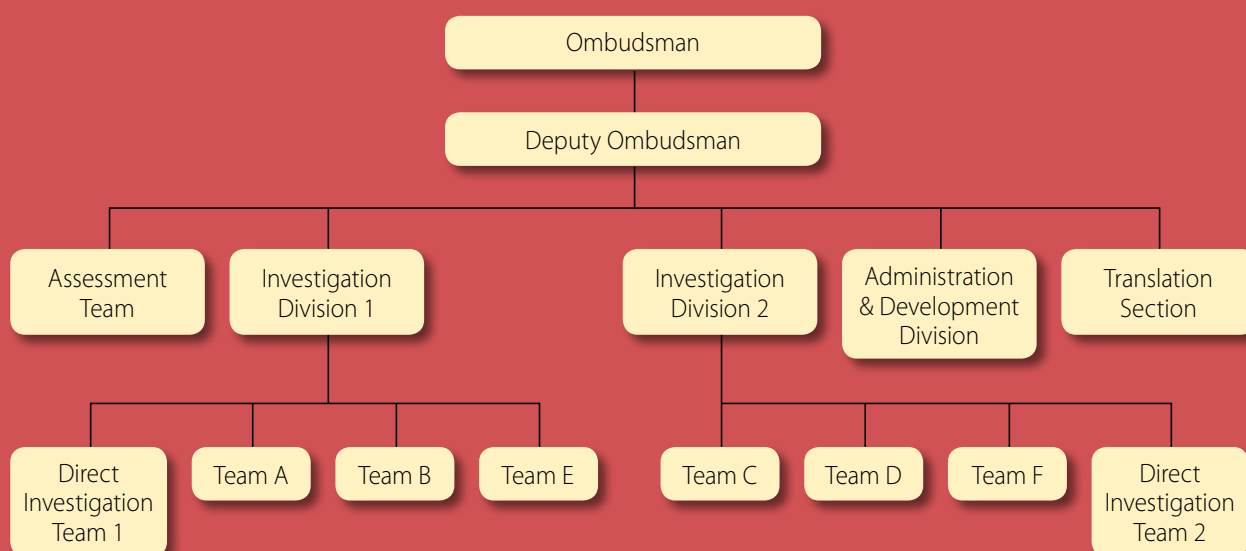
5.1 The caseload of the Office has been increasing steadily over the years. Discounting topical complaints (which a common subject attracts enormous complaints), the number of complaints received in the past three years was close to 5,000, some 10% over the figures five years ago. This has meant a need to strengthen our investigative workforce.

5.2 In July 2009, we established our sixth team for investigation of cases with a redistribution of responsibilities for fair spread of workload and recruitment of staff for reinforcement of resources. Where practicable, however, we endeavoured to make internal redeployment of staff for operational need.

5.3 Meanwhile, vacancies arose in different ranks of the Investigation Officer grade as a result of wastage due to retirement and resignation for personal and staff management reasons. In this connection, we have mounted exercises to recruit staff since early 2009. In the event, a total of five Investigation Officers (two each at Chief, and Senior levels and one at Investigation Officer level) and three Complaints Assistants joined our Office in 2009.

5.4 It is our practice to recruit temporary investigators with rich experience in public administration to cope with fluctuations in caseload. The temporary resources this year is equivalent to 4.3 full-time regular staff.

**Fig. 5.1** Organisation Structure



**Fig. 5.2**

<b>Staff Complement</b>			
<b>Breakdown of Staff</b>	<b>As at 31.3.2008</b>	<b>As at 31.3.2009</b>	<b>As at 31.3.2010</b>
Directorate	4	4	4
Investigation	50	56	51
Administrative & Support	44	47	47
<b>Total regular staff</b>	<b>98</b>	<b>107</b>	<b>102</b>
Temporary investigation staff: equivalence to full-time posts (total man-days)	4.4 (1,171)	4.8 (1,268)	4.3 (1,146)
Temporary support staff	-	4	12
<b>Grand Total</b>	<b>102.4</b>	<b>115.8</b>	<b>118.3</b>

## Training

5.5 It has been my firm belief that training is important for sharpening the skills of staff for efficient and effective discharge of our duties. I also recognise the importance of good customer service at the frontline.

5.6 In April and May 2009, we organised a series of induction programmes to facilitate integration of new entrants into their new working environment. In October 2009, we commissioned the Whole Person Development Institute for a full-day seminar on handling of persistent complainants for all investigation staff. The seminar was extremely useful and highly regarded by all participants. After the seminar, one of my Chief Investigators, who previously had rich experience in resolving labour disputes, shared his experience in serving clients



**Fig. 5.3** Seminar on handling of persistent complainants

in a setting completely different from ours. This helped widen the outlook of my frontline investigators and trigger their review of their own encounters with complainants to our Office.

5.7 Customer service is not always easy, bearing in mind the vast variety of clients seeking our services every day. Our frontline staff are invariably “put on test” as it were, with each and every client. Often, they are subject

to considerable pressure in cases where our clients have unrealistic expectations or make unreasonable demands.

5.8 To ease this pressure, this year we also commissioned an expert on mental health to talk on stress management. This was well received and we plan to include it as a regular feature of our annual training programme.



**Fig. 5.4** Talk on stress management

5.9 To extend and develop our staff, for service, and for succession planning, I offer opportunities for my investigators to gain exposure on investigation systems and practices elsewhere. Even within the ombudsman world, systems and practices for complaint handling and investigation vary from places to places due to differences in social, cultural and political background. As a start, I have sent three of my investigators (one Chief and two



**Fig. 5.5** Overseas training in Thailand

Seniors) for overseas training. One of them was put on attachment to the Korean Ombudsman Office in November 2009 and two others visited Thailand in February 2010 for a special training programme on complaint handling under the Regional Technical Assistance programme run by the Asia Ombudsman Association. This programme was an eye-opener for ombudsman officers in the Asian region. On their return, all three participants shared their training experience with colleagues in an open forum.

5.10 Locally, I have reached agreement with the Secretary-General of the Legislative Council Secretariat for exchange of experience in complaint handling between the two offices. In March 2010, as a first step, one of my Chief Investigators introduced our role and mission in complaint handling in a talk to the officers of the Complaints Units of the Legislative Council Secretariat. My Chief Manager also spoke on how we handle public complaints against our staff.

## Equal Opportunities

5.11 To promote equal opportunities and eliminate racial discrimination, Government introduced the "Race Discrimination Ordinance" ("RDO") on 10 July 2009. The purpose is to define acts of unlawful racial discrimination and set out the legal framework for prevention such discrimination.

5.12 We fully support this move for greater equality. To cater for the needs of the ethnic minorities identified by Government, we have translated our publicity materials, including the postage-free complaint form, into their languages to ensure they have equal access to our services. We have also worked out special reception arrangements in consultation with our frontline staff for receiving and interviewing, when ethnic visitors come to us in person.



**Fig. 5.6** Overseas training in Korea

5.13 While Government has established district translation and interpretation service centres for the specified ethnic minorities, we have explored and secured service contractors with proven standard and quality in providing these service. This would give us ready access for their services and ensure prompt translation or interpretation for our ethnic clients.

5.14 Since the mid-nineties, Government has been legislating against discrimination, in several forms. All along, we have been an "equal opportunities employer". This year, to reflect our commitment to equality, we have drawn up our policy statement on equal opportunities for staff guidance in serving the community.

## **Fig. 5.7** Policy Statement on Equal Opportunities

*In processing complaints about maladministration in the public sector, the Office of The Ombudsman treats all complainants equally, without discrimination. No one is debarred from lodging a complaint with our Office for reasons of sex, age, race, education, disability or family status.*

*In recruitment, promotion and staff development, our Office offers equal opportunities. Individuals are selected on job requirements and merit, relevant aptitude and competence, performance and potential.*

*Our Office treats clients and staff with all fairness and due dignity. We are committed to ensuring equal opportunities in all areas applicable.*



## Security for Staff

5.15 Recent years has seen a steady trend for our clients to display aggressive behaviour when they are not satisfied with the outcome of our inquiries. This year, on a few occasions, we have had to resort to the Building Management and even the Police for assistance. These incidents have inevitably brought into sharp focus the need to safeguard our frontline staff.

5.16 We have reviewed our security measures in open common areas such as our reception counter and interview rooms and strengthened them, where necessary, for staff protection. In addition, we have included a familiarisation tour in our induction training to introduce the safety measures and equipment to our new colleagues.

5.17 To cater for mass petition to the Office and unforeseen need for security service, we will resort to security services on call for maintaining order and minimising security risks. In doing so, we would carefully assess the implication of this arrangement on our corporate image as in most cases, we are not the target of complaint.

## Document Management Project

5.18 In late 2008, we established a project team to digitise all our complaint and investigation records for storage in a more systematic, durable and readily retrievable format. After an initial learning period, the project team has proceeded in full swing since early 2009. By March 2010, we have successfully transformed into electronic format all complaint and investigation records up to 2006. We would start processing records of the current year in a few months. When all past records are

transformed, we would need to retain only a small team to deal with new records.

## Complaints against the Office

5.19 This year, we concluded 21 complaints against staff manners or our work practices. This is the highest number since 2002. Of these complaints, eight were found to be “partially substantiated”. This reflected inexperience of some of our new staff in serving our clients and perhaps partly the increasing expectation of the public.

5.20 On each occasion, we counselled the staff concerned on any deficiencies for improvement. To strengthen the communication skills of our staff, we have scheduled training for June 2010 on interviewing techniques and answering telephone calls.

5.21 Complaints against our staff would often arise from dissatisfaction with our conclusions and decisions on complaints against Government departments and public organisations. In these circumstances, the target for complaint is misdirected: for decisions on cases are made by me, not the staff issuing the reply or report on my behalf. Where appropriate, we treat these cases as requests for review. Where there is fresh evidence for revising the outcome on the complaint cases, we will do so. Our ultimate aim is to endeavour to maintain fairness and objectivity in our investigation.

5.22 Nevertheless, we take complaints most seriously as each complaint provides us with an opportunity to review our work systems and practices. We treasure the lessons learned and are always ready to improve our services to the community.

**Fig. 5.8**

Complaints against the Office concluded in 2009/10				
Nature	Substantiated	Partially Substantiated	Unsubstantiated	Inconclusive
Staff manner (including delay and negligence)	-	6	9	1
Office administration and work procedures	-	1	2	-
Both staff manner and office administration and work procedures	-	1	1	-
<b>Total</b>	<b>21</b>			

6.1 Our emphasis this year has been to enhance public understanding of our jurisdiction. We launched information campaign *via* mass media and fostered community relations through visits and talks. At the same time, we sustained our endeavours to promote positive complaint culture among the public and various stakeholders.

## Information Campaign

6.2 In view of the number of complaints received that are outside The Ombudsman's purview, we have focussed on informing the public on The Ombudsman's authority and the restrictions on his investigative powers. We broadcast info-service film clips on TV and on public buses in November 2009. Our aim was to reduce the number of incoming complaints that fall outside our jurisdiction for more effective deployment of our time and resources for improving the standard of public administration.

## Media Relations

6.3 We regularly announce our investigative work of significant public interest through media releases and press conferences. This year, we published the results of inquiries into two complaints and six direct investigations. We also declared initiation of four other direct investigations. For press conferences, summaries of investigation reports are released through *OmbudsNews*, our newsletter, and on our website.

6.4 On the whole, these releases attracted extensive coverage across the local media, enhancing public



**Fig. 6.1** The Ombudsman in Press Conference

awareness and hopefully, better understanding of our work. Invariably, our releases generated an upsurge of enquiries and even complaints from members of the public.

6.5 Apart from regular press conferences and media releases, we experimented with a new mode for public education: articles on the jurisdiction of The Ombudsman on a free news daily for eight consecutive weeks from November to December 2009. This new approach has proved to be a useful vehicle for our messages to the general public, especially daily commuters on mass transit transport services.

## Resource Centre

6.6 Our Resource Centre houses a wealth of Ombudsman-related publications worldwide. This includes our *OmbudsNews*, Annual Reports, video recordings and news clips on our activities as well as periodicals from overseas ombudsman offices.



**Fig. 6.2**

Press Conferences/Public Announcements	
7 May 2009	<ul style="list-style-type: none"> <li>Declaration of direct investigation into checking of eligibility for subsidised public hospital and health services by Hospital Authority and Department of Health</li> </ul>
2 June 2009	<ul style="list-style-type: none"> <li>Declaration of direct investigation into practices for enforcement of fire safety regulatory measures by Fire Services Department and Food and Environmental Hygiene Department</li> <li>Announcement of findings of direct investigation on system for development of question papers in public examinations</li> <li>Announcement of findings of anonymised investigation into complaint against Agriculture, Fisheries and Conservation Department and Efficiency Unit for euthanising a dog reported lost</li> </ul>
27 August 2009	<ul style="list-style-type: none"> <li>Announcement of findings of direct investigation on:               <ol style="list-style-type: none"> <li>regulatory system of lifts</li> <li>Housing Department's handling of complaints involving claims</li> </ol> </li> </ul>
28 September 2009	<ul style="list-style-type: none"> <li>Declaration of direct investigation into non-emergency ambulance transfer service by Hospital Authority</li> </ul>
29 October 2009	<ul style="list-style-type: none"> <li>Announcement of findings of anonymised investigation into complaint against Lands Department and Land Registry</li> <li>Announcement of findings of direct investigation on granting of disability allowance and processing of appeals by Social Welfare Department</li> </ul>
21 January 2010	<ul style="list-style-type: none"> <li>Declaration of direct investigation into actions of Transport Department for safe operation of public light buses</li> </ul>
28 January 2010	<ul style="list-style-type: none"> <li>Announcement of findings of direct investigation on:               <ol style="list-style-type: none"> <li>effectiveness of administration of Code on Access to Information by Constitutional and Mainland Affairs Bureau</li> <li>checking of eligibility for subsidised medical services by Hospital Authority and Department of Health</li> </ol> </li> </ul>

## Youth Education

6.7 The next generation is the future leaders of our society. We believe they should be nurtured with positive social values from their youth. Our educational initiatives are always geared to that end. Meanwhile, we are looking into the production of tailor-made materials and programmes for young people in the coming years.

## Publications

6.8 We update our publications periodically. This year, we have updated our complaint form for clearer guidance to prospective complainants and more efficient processing of cases. Other publications, such as our leaflet and performance pledge, are available in our Resource Centre, on our website and in District Offices of the Home Affairs Department.



**Fig. 6.3** Publications of our Office (Performance Pledge, Complaint Form, Leaflet, Tips Booklet)

The Ombudsman’s Awards

6.9 Since inception, we have endeavoured to develop a positive culture for grievance redress and promote public awareness of the ombudsman system. In fulfilling this mission in the public sector, we acknowledge every year the efforts of public organisations and their officers exemplary in handling complaints and enhancing the quality of public administration by The Ombudsman’s Awards. In November 2009, The Ombudsman presented the Grand Award to the Legal Aid Department, and the other two Awards to the Customs and Excise Department and the Land Registry. 19 public officers were also honoured. Over 140 representatives from more than 25 public organisations were present to share this memorable occasion, the 13th anniversary of the Awards. It is clear that these Awards are valued: officers honoured come with their family members to share the joy and honour of their achievement.



Fig. 6.4 The Ombudsman’s Awards Presentation Ceremony

Fig. 6.5

Winning Organisations for 2009
Legal Aid Department (Grand Award)
Customs and Excise Department
Land Registry

Fig. 6.6

Individual Awards for 2009	
Organisation	No. of Awardees
Buildings Department	1
Correctional Services Department	1
Customs and Excise Department	1
Department of Health	1
Drainage Services Department	2
Efficiency Unit	1
Electrical and Mechanical Services Department	1
Environmental Protection Department	1
Food and Environmental Hygiene Department	2
Housing Department	1
Immigration Department	1
Inland Revenue Department	1
Lands Department	1
Mandatory Provident Fund Schemes Authority	2
Social Welfare Department	1
Water Supplies Department	1

Outreach Talks

6.10 To promote the mission of the Office, we reach out to different sectors. We give talks to Government departments, schools, universities and centres for the elderly persons. This year, we visited seven departments and public organisations. The feedback from these sessions had been encouraging.

Meeting with Legislative Councillors

6.11 Each year, The Ombudsman meets with Members of the Legislative Council (“LegCo”) to keep them updated on our work.

6.12 The meeting on 8 December was my first meeting with Members as The Ombudsman. The exchange of views covered aspects of special concern and public interest such as water seepage and street management.

### Institutional Liaison

6.13 At the international level, I participated in the affairs of the International Ombudsman Institute ("IOI") and the Asian Ombudsman Association ("AOA"), to maintain close contact with our counterparts worldwide. I was elected a Board member in the IOI World Conference-cum-Board Meeting in Stockholm, Sweden in June 2009. In November, I attended the AOA Conference in Bangkok, Thailand and the IOI Board of Directors Meeting in Vienna, Austria. In March 2010, I joined the 25th Australasian and Pacific Ombudsman Region Conference and regional meeting in Canberra, Australia. These contacts help Hong Kong to maintain cooperative interface with Ombudsman institutions worldwide and, thus, exposure and enhancement for our local body.

6.14 My office also benefited from the Regional Technical Assistance ("RETA") Programme of the AOA. We nominated officers to attend study tour in Korea and training in Bangkok, Thailand (see **Chapter 5**). In turn, we received an officer from the Wafaqi Mohtasib (Office of The Ombudsman), Pakistan. These training opportunities help to give our officers greater exposure and exchange of views with their counterparts, gleaning good practices from kindred ombudsmen offices.

### Exchange with the Mainland

6.15 The China Supervision Institute and my Office have maintained an exchange programme since 1996. This programme was suspended with the sad catastrophe of the earthquake in Sichuan in mid-2008. In June 2009, I led a seven-member delegation to the Mainland for a week. We exchanged views and shared experience with the officials in Beijing, Hunan and Fujian on systems and practices for monitoring public administration. Through meetings and discussions, my colleagues and I gained insight into the system and policy of supervision in the Mainland. In return, we briefed our Mainland counterparts on our procedures and practices.

6.16 Meanwhile, we continue to receive officials from the Mainland, briefing them on our jurisdiction and *modus operandi*. This year, we gave talks to 13 groups comprising 324 participants.

### Client Opinion Survey

6.17 To gauge the complaint culture and ascertain community expectations of complaint channels, we conduct surveys periodically to collect opinion from the public. The last survey of this kind was carried out in 2004 while we commissioned the Census and Statistics Department to conduct the Thematic Household Survey in 2007 to collect community feedback. These surveys provide us with useful insight for planning and delivery of our service. In 2010, we plan to conduct a survey for review and improvement, for completion in the second half of 2010.

### Looking Ahead

6.18 In striving for ever better systems and practices in public administration, we will continue to take reference from views of the public and from ombudsman practices elsewhere.



**Fig. 6.7** China Exchange Programme

“ That at the bottom. ”

Which of the two lines is the extension of that on the right?



# Annexes

## Annex 1

# List of Scheduled Organisations

### Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force and the Secretariat of the Public Service Commission
2. Airport Authority
3. Employees Retraining Board
4. Equal Opportunities Commission
5. Financial Reporting Council
6. Hong Kong Arts Development Council
7. Hong Kong Housing Authority
8. Hong Kong Housing Society
9. Hong Kong Monetary Authority
10. Hong Kong Sports Institute Limited
11. Hospital Authority
12. Kowloon-Canton Railway Corporation
13. Legislative Council Secretariat
14. Mandatory Provident Fund Schemes Authority
15. Privacy Commissioner for Personal Data
16. Securities and Futures Commission
17. The Hong Kong Examinations and Assessment Authority
18. Urban Renewal Authority
19. Vocational Training Council
20. West Kowloon Cultural District Authority

### Organisations Listed in Part II of Schedule 1, Cap. 397

1. Independent Commission Against Corruption
2. Hong Kong Auxiliary Police Force
3. Hong Kong Police Force
4. Secretariat of the Public Service Commission

## Annex 2

# Circumstances Where Complaints are not Followed Up or Investigated

### **Actions not Subject to Investigation - Schedule 2, Cap. 397**

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

### **Restrictions on Investigation of Complaints - section 10(1), Cap. 397**

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

### **Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397**

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary



## Annex 3

# Achievement of Performance Pledges

(1 April 2009 to 31 March 2010)

### (A) Enquiries\*

	Response Time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	13,622 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	220 (86.3%)	34 (13.3%)	1 (0.4%)

\* Excluding enquiries on existing complaints.

### (B) Complaints\*\*

	Response Time		
Initial assessment/ acknowledgement	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	4,355 (99.9%)	5 (0.1%)	0

\*\*Excluding complaints to others copied to us and cases outside jurisdiction or under restriction.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	879 (78.90%)	182 (16.34%)	53 (4.76%)	2,002 (54.69%)	1,582 (43.21%)	77 (2.10%)

### (C) Group visits and talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	3 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	13 (100%)	0

## Annex 4

# Panel of Professional Advisers

### Engineering

Mr Yan-kee CHENG  
Mr Joseph Ming-kuen CHOW  
Dr Raymond Chung-tai HO  
Mr Edmund Kwong-ho LEUNG  
Mr Vincent Kam-chuen TSE  
Mr Chi-tin WAN

### Legal

Mr Brian G. BAILLIE  
Mrs Anne R. CARVER  
Professor Johannes M. M. CHAN  
Professor M. J. A. COORAY  
Dr Man-chiu LO  
Mr Benny Y. T. TAI  
Professor Gui-guo WANG

### Medical

Professor T. K. CHAN  
Professor P. C. HO  
Professor Kar-neng LAI  
Professor Felice LIEH-MAK  
Dr Chung-kwong WONG

\* In alphabetical order

## Annex 5

# Glossary of Terms

### Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

### Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

### Complaint to Others Copied to Us

This is a complaint addressed to another organisation and copied to The Ombudsman with no request for action. It may become a complaint if The Ombudsman sees reasons to intervene.

### Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

### Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. It is dubbed a "mini direct investigation" where substantial information has been collected during the process and on completion of assessment, a fuller inquiry is found to be not necessary.

### Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

### Enquiry

An enquiry is a request for information or advice. It is not yet, but may develop into, a complaint.

### Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and invariably with recommendations for improvement or remedy upon conclusion.

## **Inconclusive\***

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

## **Internal Complaint Handling Programme (“INCH”)**

This is a form of preliminary inquiries for relatively simple cases. With the consent of the complainant, we refer a case to the organisation concerned for investigation and reply direct to the complainant, with a copy to this Office. If the reply does not fully address the complaint, The Ombudsman may decide to continue with the inquiries.

## **Investigation**

This may be a full investigation into a complaint or a direct investigation without a complaint.

## **Maladministration**

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

## **Mediation**

This is a voluntary process carried out where the complainant and the organisation concerned agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

## **Outside Jurisdiction**

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman’s jurisdiction under The Ombudsman Ordinance.

## **Preliminary Inquiries**

These refer to inquiries to determine whether a full investigation is necessary.

## **Rendering Assistance / Clarification (“RAC”)**

This is another form of preliminary inquiries where INCH is considered inappropriate. After assessing all relevant facts, and considering a full investigation not necessary, this Office presents to the complainant and the organisation under complaint our findings with improvement or remedial suggestions.

\* Previously “Incapable of Determination”

### **Restrictions on Investigation**

These are the restrictions on investigation under The Ombudsman Ordinance.

### **Substantiated other than Alleged**

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

### **Substantiated, Partially Substantiated and Not Substantiated**

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

### **Topical Complaints**

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the complainee organisations.

### **Withdrawal of Complaint**

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still decide to continue the investigation.

## Annex 6

# Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(a) Guidelines for clarity, consistency or efficiency in operation	
Organisation* (Case reference)	Administrative Enhancement
<b>AFCD</b> (2008/3465)	Operational guidelines established on taking enforcement action (including prosecution where warranted), with specified timeframes, against owners/keepers of unlicensed dogs
<b>AFCD</b> (2009/0193)	Election guidelines formulated for Agricultural Co-operative Societies to facilitate proper elections of their office-bearers Guidelines issued for AFCD staff in offering assistance in the election process
<b>AFCD</b> (2009/2168)	Clearer guidelines issued to ensure consistency between AFCD Animal Management Centres in handling requests by citizens who have found a lost animal to contact the animal's owner direct
<b>BD</b> (2008/2004)	Guidelines on the "Work Interface between JO <sup>#</sup> and BD in Handling Water Seepage Complaints" reviewed to ensure better and closer liaison between JO/BD and the Existing Buildings Division of BD
<b>FEHD</b> (2008/2376)	Guidelines issued on the need for punctuality in attending joint site inspections and proper documentation for handling seepage complaint Checklist drawn up for inspections outside office hours, requiring the noting down of appointment details and complainant's contact information to facilitate better liaison
<b>FEHD</b> (2008/2792)	Documentation and filing system for complaints of dripping air-conditioners improved to enhance accountability, supervision and prevention of record loss Inspection checklist drawn up to ensure consistency of inspection standards and to facilitate staff supervision
<b>HA</b> (2007/5222)	Arrangement made to ensure proper documentation of psychiatric patient having been advised of his/her right to see a judge/magistrate
<b>HD</b> (2009/3224)	Procedures of a public rental housing estate management office to deal with incidents enhanced to ensure proper recording and documentation of incidents and action taken
<b>HKHS</b> (2009/2659)	Measures introduced to combat proliferation of unauthorised installation of radiators of air-conditioners on the external wall in an Estate: <ul style="list-style-type: none"> <li>enhanced publicity on compliance with tenancy terms and management rules;</li> <li>installing support at designated positions to facilitate tenants to reinstall the radiators;</li> <li>requiring defaulters to rectify the problem within a year; and</li> <li>terminating the tenancy agreement in case of continuing breach for a year</li> </ul>

\* See Table 4 for the full name of the organisation against the acronym.

# JO refers to the Joint Office set up by BD and FEHD for handling seepage complaints.

**Annex 6** Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

<b>JO<sup>#</sup></b> (2008/4243 & 4244)	A new condition incorporated in BD's standard consultancy contract for investigating seepage complaints, requiring the consultant firm to submit witness statements from their investigators on their investigations, to avoid difficulty in possible prosecution action due to departure of investigators
<b>SWD</b> (2008/6001)	Clarification made in procedural manual to remind staff to seek professional advice from a dietitian in determining whether special diets provided by a hostel will meet the dietary needs of a Comprehensive Social Security Assistance recipient living in the hostel, to avoid inappropriate discontinuation of payment of diet supplement
<b>WSD</b> (2008/5312)	"Wastage of water" defined (a 30-minute positive water meter flow giving noticeable movement of the horizontal lines of the dial) for a clearer basis for action on seepage complaints

**(b) Better arrangements for inter-departmental co-ordination**

<b>Organisation*</b> (Case reference)	<b>Administrative Enhancement</b>
<b>TD</b> (2009/0254)	Communication with the Judiciary improved for updating the latter on the latest correspondence address of drivers to ensure successful delivery of summonses

**(c) Measures for better public enquiry/complaint handling**

<b>Organisation*</b> (Case reference)	<b>Administrative Enhancement</b>
<b>HAB</b> (2009/1681)	The enquiry email address changed from hab1@hab.gov.hk to hab@hab.gov.hk to avoid confusion to the public
<b>HKEAA</b> (2009/2994)	Recording of oral examinations made in case of complaints on unfair assessment in such examinations
<b>Lands D</b> (2009/0442)	Email system of the Lands Administration Office enhanced to enable officers whose post titles have been changed to continue to receive emails sent to their old email addresses, to avoid public enquiries not being attended to
<b>TELA</b> (2009/0784)	Measures introduced by the Film Sub-division for its 24-hour complaint hotline staff to check more frequently voice mails recorded on the hotline
<b>WSD</b> (2006/0273)	Guidelines issued stipulating timelines for issuing interim and final replies on enquiries and complaints on refund of water account deposits

\* See Table 4 for the full name of the organisation against the acronym.

# JO refers to the Joint Office set up by BD and FEHD for handling seepage complaints.



#### (d) Measures for better service

Organisation* (Case reference)	Administrative Enhancement
<b>FEHD</b> (2009/3912)	The schedule for clearing large refuse items in a refuse collection point in Tuen Mun increased from weekly to daily  The refuse collection point rebuilt and enlarged, so that it may keep more large refuse items
<b>FSD</b> (2008/4151)	Procedures improved to minimise documentation of patients' particulars and medical conditions necessary before departure of ambulance, so as to ensure quickest delivery of patient to hospital
<b>HD</b> (2009/3474)	Clearer guidelines issued to ensure proper monitoring of progress of loss adjusters' processing of claims
<b>HKEAA</b> (2008/4096)	Practice changed so that re-marked examination scripts will be provided to candidates upon request
<b>Imm D</b> (2008/3397)	Computer system enhanced to prevent the recurrence of issuing the same identity card number to two persons
<b>JA</b> (2004/0776)	Average time taken by the Small Claims Tribunal to issue Awards/Orders shortened from 8 days to 4.61 days through improved work flow and increased manpower
<b>LAD</b> (2008/6066)	Letter issued to the Law Society asking panel solicitors to advise all aided persons about language choice in proceedings and the implications of such choice, so that the latter can make an informed choice
<b>Lands D</b> (2007/2501)	Routine check and inspection conducted by Lands D to ensure that a playground hitherto closed by a private estate was open to the public
<b>LCSD</b> (2006/3246)	Facilities introduced in public libraries for accepting payment of various fees and charges by Octopus Card with receipts issued automatically, thus avoiding disputes on whether payment has been made or not
<b>PO</b> (2007/2760)	A public consultation exercise mounted on proposals for citizens to opt out from receiving postal circular service
<b>TD</b> (2009/1046)	Measures introduced for more frequent auctions of special vehicle registration marks so that a particular registration mark will be available for auction more quickly
<b>WSD</b> (2007/6083)	Guidelines revised allowing verbal application for vehicle entry permits into a WSD control reservoir area in Sai Kung, subject to written applications being received within seven working days

\* See Table 4 for the full name of the organisation against the acronym.

<b>(e) Clearer information to the public</b>	
<b>Organisation*</b> (Case reference)	<b>Administrative Enhancement</b>
<b>EPD</b> (2007/0017)	A note introduced to the test certificate on smoke emission of vehicles where the vehicle, though passing the test, is still considered as requiring repair, to avoid dispute by the vehicle owner when the vehicle is spotted by EPD as emitting excessive smoke and needing repair
<b>HA</b> (2009/0226)	Footnote of a clinic's re-appointment slip revised to give clearer instruction for patients unable to attend scheduled re-appointments to change the date of re-appointment
<b>HAB</b> (2008/6249)	Application procedures for sponsorship from the Arts Development Fund for overseas performances revised and clearer information disseminated on the standards expected from applications and the reasons for an application being rejected
<b>HD</b> (2009/1724)	Clearer wording used in letters notifying result of application for transfer under the "Territory-wide Overcrowding Relief Exercise" so as to inform the applicant clearly of the reasons of rejection
<b>HD</b> (2009/3338)	A public rental housing application form revised to give clearer instructions on provision of correspondence address to avoid letters to applicants mistakenly sent to old addresses, resulting in unwarranted disclosure of the applicant's personal information to third parties
<b>HKADC</b> (2008/6205)	In relation to the HKADC Grants for film projects: <ul style="list-style-type: none"> <li>measures introduced to enhance public awareness and understanding of the Examiner System of the Grants Adjudication Procedures and the methods it adopts to prevent conflict of interest</li> <li>new term included in the agreement with Grant recipients for HKADC to have copyright of the supported projects for copies to be made available for public viewing at the Hong Kong Film Archive</li> </ul>
<b>HKEAA</b> (2009/2522)	Revised the Handbook for Candidates to avoid ambiguity
<b>LCSD</b> (2008/4875)	A notice of "Summary of Libraries Regulations" posted on the drop boxes so that readers will have a better understanding of the library rules and regulations, including those relating to liabilities of a library card holder for loss and damage of borrowed library materials
<b>SWD</b> (2009/3433)	Information on the revised income limit for Old Age Allowance disseminated at venues frequented by elderlies such as public rental housing estate offices and District Offices
<b>VTC</b> (2009/2602)	Procedures introduced to ensure candidates are informed of examination requirement in writing to avoid misunderstanding

\* See Table 4 for the full name of the organisation against the acronym.

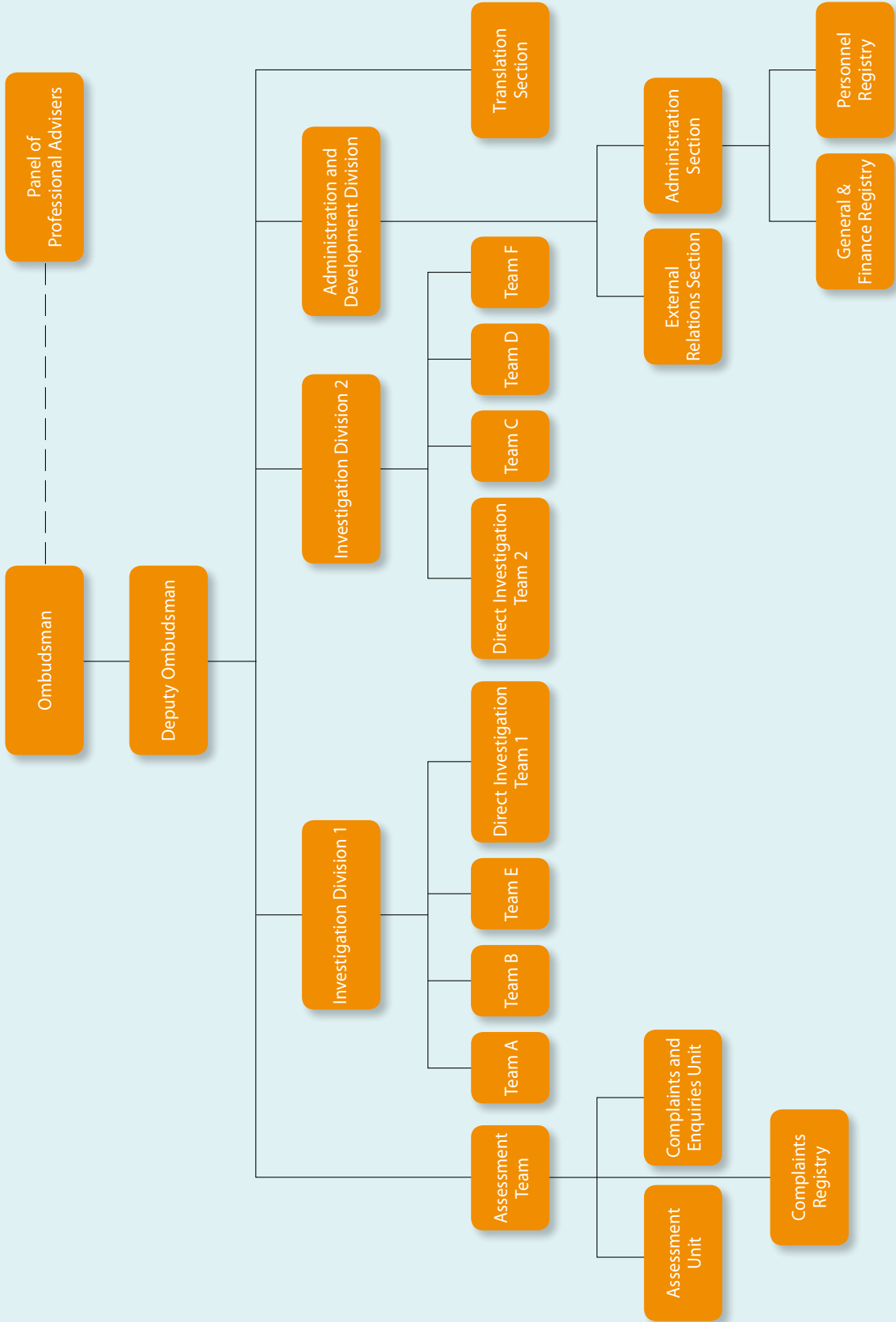
**(f) Training for staff**

<b>Organisation*</b> (Case reference)	<b>Administrative Enhancement</b>
<b>Lands D</b> (2009/0711)	Communication skills of staff strengthened through briefing session held before the commencement of the pre-clearance survey

\* See Table 4 for the full name of the organisation against the acronym.

# Organisation Chart

## Office of The Ombudsman



## Annex 8

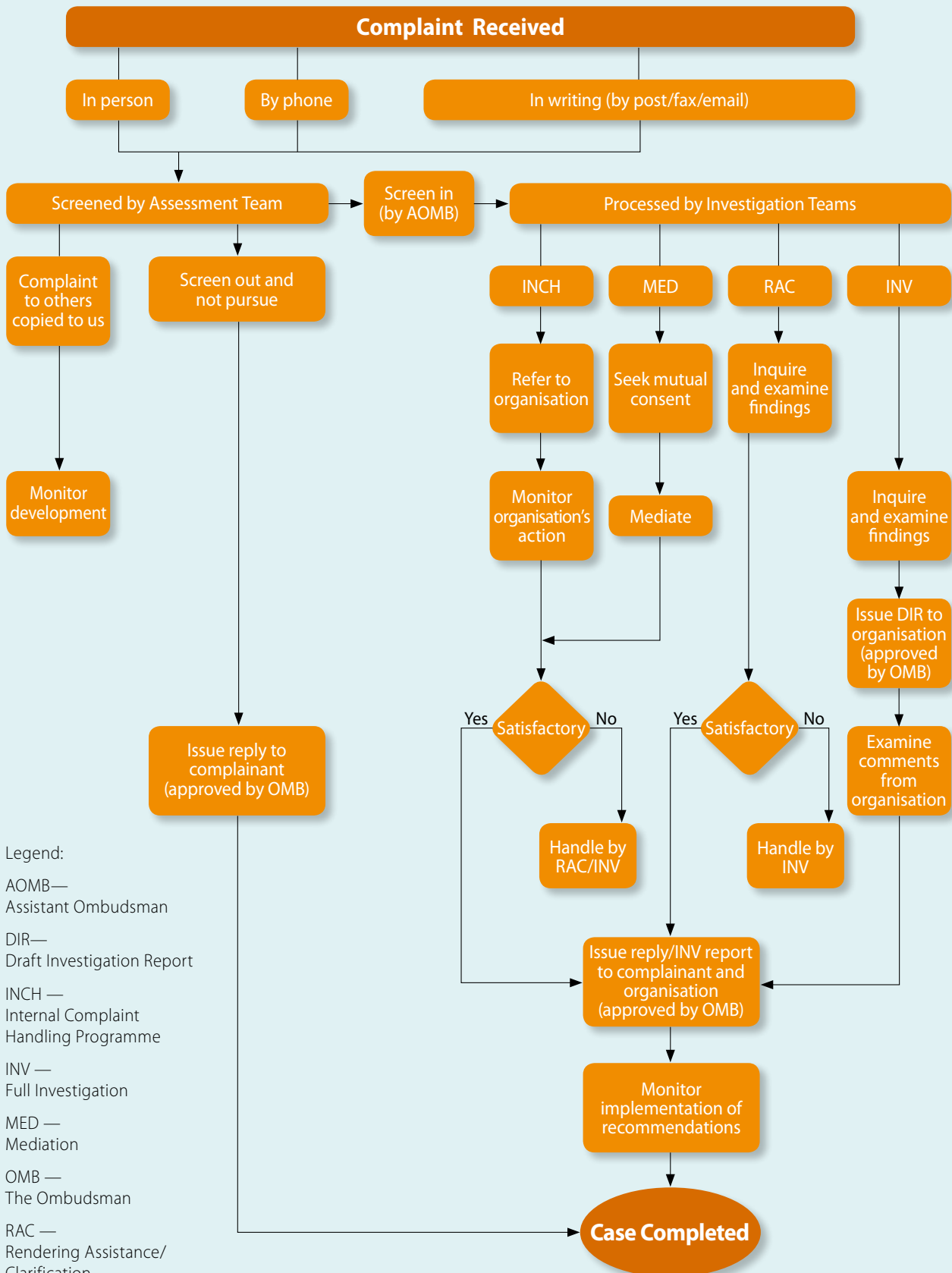
# Visits to the Office of The Ombudsman

Date	Visitors*
14 May 2009	Participants of the Legal Exchange Programme organised by Asian Legal Resource Centre
16 June 2009	Participants of the Senior Judges Seminar of China (Hong Kong), organised by School of Law, City University of Hong Kong
15 July 2009	Delegates from the Training for officials from Jiangsu Province, organised by China Business Centre, Hong Kong Polytechnic University
22 July 2009	Delegates from Standing Committee of Guangzhou Municipal People's Congress, China
22 July 2009	Participants of the Legal Exchange Programme organised by The Legal Education Trust Fund
9 September 2009	Delegates from the Training for civil servants from Shenzhen, organised by Hong Kong Financial Services Institute
29 September 2009	Participants of the Legal Exchange Programme organised by Asian Legal Resource Centre
5 November 2009	Delegates from the Training for officials from Gansu Province, organised by Hong Kong Financial Services Institute
18 November 2009	Delegates from the Training for officials from Shandong Province, organised by China Business Centre, Hong Kong Polytechnic University
11 December 2009	Participants of the 7th Postgraduate Certificate Course in Corruption Studies, organised by School of Professional and Continuing Education, University of Hong Kong
22 December 2009	Delegates from Tianjin City People's Government, China
22 December 2009	Delegates from Henan Provincial People's Government, China
29 December 2009	Ms Eman Essway, Officer from National Council for Human Rights, Egyptian Ombudsman Institute
5 January 2010	Mr Rui Macieira, Deputy Director General, Ministry for Foreign Affairs, Portugal
11-19 January 2010	Mr Ahmed Salim, Consultant, Wafaqi Mohtasib (Office of The Ombudsman), Pakistan
15 January 2010	Participants of the 2nd Advanced Programme for Chinese Senior Judges, organised by School of Law, City University of Hong Kong
20 January 2010	Delegates from the Training for officials from Fujian Province, organised by China Business Centre, Hong Kong Polytechnic University
18 February 2010	Mr M. Abdul Aziz, Cabinet Secretary, and delegates from the Government, Bangladesh
2 March 2010	Ms Xin Chun-ying, Deputy Director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress, China

\* Excluding group visits from local schools and social service agencies.

## Annex 9

# Flow Chart on Handling of a Complaint



## Annex 10

# Summaries of Direct Investigations

### Electrical and Mechanical Services Department (“E&MSD”)

Case No. OMB/DI/188

Regulatory System of Lifts

(Investigation declared on 15 January 2009 and completed on 24 August 2009)



This direct investigation on the regulatory system of lifts was conducted in the light of public concern over a series of lift incidents since October 2008.

### Regulation of Lifts

2. E&MSD's regulatory framework of lifts rests on three legs:
  - (a) a statutory certification system whereby a lift owner is to ensure that the lift is examined regularly and that there is a safety certificate, signed by a registered lift engineer (“RE”) and endorsed by E&MSD, conspicuously displayed in the lift;
  - (b) registration of contractors (“RC”) and engineers for repair and maintenance works, underpinned by the Performance Monitoring Points System for awarding administrative demerit points; and
  - (c) direct inspection and enforcement action where E&MSD inspects lifts and issues warning letters for breach found under the Points System.

### Problems Identified and Our Observations

3. E&MSD took measures to strengthen the regulatory regime immediately after the spate of lift incidents, in reaction to probing by the Legislative Council and in the course of our direct investigation. However, to enhance lift safety in general, problems must be tackled at source.
4. Government alone cannot, and should not, assume total responsibility for the maintenance and safety of each and every lift in Hong Kong. E&MSD should promote the principles of “shared responsibility” and enable “user surveillance”. Lift owners have a prime responsibility and they share it with the RCs and REs they engage to service their lifts. The safety certificate is a key instrument in enabling “user surveillance”. Properly documented, the certificate is both a safety assurance and a key source of information on the current state of lift maintenance. With a transparent record of E&MSD's disciplinary system against RCs, lift owners can make an informed choice and the trade will view it as an incentive for upholding standards. Consumer choice means business and competition is a powerful tool for quality assurance.



### ***Standards, Statistics, Monitoring and Analysis of Trends***

5. E&MSD's standards and time-lines for examination of lifts and submission of safety certificates were unclear and vital information and statistics in these respects not available. We urged E&MSD to invest time and efforts in setting clear standards and building up an operational information base.

### ***Handling Overdue Cases***

6. We observed that E&MSD's timeframe of issuing reminders for cases where examination of lifts has been overdue is long. It is also inconsistent with the statutory timeframe to issue orders to direct examination or prohibit use of a lift. Although E&MSD has tightened up the monitoring of lift examination and outstanding lift certificates, it should monitor and assess the effectiveness of these measures regularly.

### ***Tracing Responsibility for Late Certificates***

7. We noted that E&MSD cannot ascertain the party or parties responsible for delay in submitting lift certificates and a time-limit is not imposed on RCs to countersign the certificate before sending it to lift owners. E&MSD should require RCs to record the date of issuing lift certificates to lift owners and impose administrative sanctions to repeated offenders for late submission of certificates.

### ***Transparency of Disciplinary Records***

8. Disclosure of E&MSD's disciplinary records is useful reference for lift owners in their selection of RCs. The potential damage to reputation and loss of business will urge RCs and REs to stay off E&MSD's blacklist. We suggested that E&MSD inform the insurance industry of the availability of such information on its website.

### ***Display of Certificates***

9. In many cases, lift certificates are not displayed in a prominent position for easy reference or inspection and the print is small. E&MSD should revise the format of the certificate to make it more legible, particularly with the expiry date boldly and clearly visible in standardised format.

### ***Flaws in Disciplinary Action***

10. E&MSD normally should initiate disciplinary action if a RC or RE receives three warning letters within 12 months. In the only case E&MSD considered for disciplinary actions on a RC from 2005 to 2008, the following problems were identified:

- (a) the E&MSD Engineer who reviewed the case had failed to report the result to his supervisor and the case was not followed up subsequently;
- (b) E&MSD had failed to issue four warning letters despite meeting the criteria due to computer error; and
- (c) E&MSD had issued five warning letters erroneously due to some computer error.

11. E&MSD should review and strengthen its procedures and pinpoint responsibilities in the administration of disciplinary measures. In addition, E&MSD should review the procedures and criteria for issuing warning letters under the Points System, set out the rules and clarify their rationale, update the document for the System for promulgation to the trade.

## Recommendations

12. The Ombudsman made 13 recommendations to the Director of the Electrical and Mechanical Services, including the following:

- (a) promote the principles of “shared responsibility” and “user surveillance” of lift safety through extensive publicity and public education;
- (b) revise the format of the lift certificate and enforce rigorously the requirement for its conspicuous display;
- (c) invest time and efforts in setting standards and building up an information base;
- (d) review in six months’ time the mechanism for following up overdue lift examinations and lift certificates;
- (e) secure information on the date RCs issue lift certificates to lift owners and impose sanctions for non-compliance;
- (f) consider a proper code of practice and a hierarchy of accountability for determining whether or not to proceed with disciplinary action against a RC or RE, including the monitoring of the progress of disciplinary proceedings; and
- (g) review the procedures and criteria for issuing warning letters under the Points System, set out the rules and clarify their rationale, update the relevant document for promulgation to the trade.

13. E&MSD has accepted our recommendations and provided us with a tentative timetable for implementation.

## Food and Health Bureau (“FHB”), Hospital Authority (“HA”) and Department of Health (“DH”)

**Case No. OMB/DI/170**  
**Checking of Eligibility for Subsidised Medical Services**  
(Investigation declared on 7 May 2009 and  
completed on 25 January 2010)

## Background

Government policy is to provide subsidised medical and health services to Hong Kong residents only and to charge non-residents at full cost. However, any person in emergency, whether resident or not, will always be treated first and charged later.



2. In practice, HA and DH accept all holders of the Hong Kong identity card ("HKIC") as eligible for subsidised services, regardless of resident status, contrary to the policy.

## Findings

3. While all Hong Kong residents are qualified for HKIC, it is not sufficient proof of resident status, as there are two types of HKIC.

- Permanent HKIC – issued to permanent residents with the right of abode in Hong Kong. This is sufficient proof of resident status.
- Non-permanent HKIC – normally issued to persons who have been granted permission by the Director of Immigration to remain in Hong Kong for over 180 days for such purposes as education, investment, employment and residence and do not have the right of abode. Non-permanent HKIC-holders become non-residents when their permission to remain in Hong Kong lapses. A non-permanent HKIC is, therefore, not sufficient proof of resident status.

4. The non-permanent HKIC carries one of the following three codes relating to resident status:

C: the holder's stay in Hong Kong is limited by the Director of Immigration at the time of registration;

U: the holder's stay in Hong Kong is not limited by the Director of Immigration at the time of registration; or

R: the holder has the right to land in Hong Kong at the time of registration.

5. To establish the resident status of non-permanent HKIC-holders, the Immigration Department considers the following two options acceptable:

**Option 1** – to require them to present their travel documents to show their permitted limit of stay has not expired. This option is being used by a number of organisations, including the Labour Department and the Housing Department, to establish resident status of clients. This checking arrangement is required of all employers in Hong Kong under section 17J of Immigration Ordinance, Cap. 115 to ensure that they hire employable persons only and not non-residents.

**Option 2** – to require those with Code C to present their travel documents to show their limit of stay has not expired. The probability of holders of non-permanent HKICs carrying Codes R or U being non-resident is very small. This option is used by organisations such as the Social Welfare Department and public sector schools.

## Comments and Observations

6. We commend Government for its policy and practice always to attend to persons in emergency, regardless of resident status, and to charge them later.

7. On the other hand, it is evident that the practice of HA and DH to accept all HKIC-holders as eligible for subsidised services without checking their limit of stay is not consistent with the policy intent. Non-compliance of practice with policy is an act of maladministration.

8. This act of maladministration has resulted in greater pressure on our already stretched medical services, longer waiting time for those eligible and an undue burden on the public purse. The problem will grow in future as more people are expected to come to Hong Kong for work or study and become eligible for the HKIC on limited stay. It is significant that the number of “lapsed” HKICs increased by 57% in 15 months from 140,000 in April 2008 to 220,000 in July 2009.

9. FHB has advised that the practice of HA and DH to accept all HKIC-holders as eligible for subsidised services without further checking have been in place for as long as it can ascertain. Before 1987, this was not a problem as anyone leaving Hong Kong for good was required to surrender the HKIC. In 1987, when Government introduced a new policy to permit permanent identity cards to be issued both in and outside Hong Kong, this requirement became inappropriate and was removed. With its removal, the non-permanent HKIC ceased to be sufficient proof of resident status and the practice of HA and DH has become inconsistent with the policy intent.

10. FHB has been aware of this problem since 2002 but has yet to come up with a solution. In November 2008, FHB set up an inter-departmental working group to explore ways of checking the resident status of non-permanent HKIC-holders. At the end of 2009, the working group noted that the review and upgrading/replacement of the smart identity card system in a few years' time would provide an opportunity for an electronic solution to be pursued.

## Conclusion and Recommendations

11. The Ombudsman considered that the situation should be rectified and recommended Government:

- (a) to introduce electronic checking as the long-term solution as soon as practicable;
- (b) in the meantime, to consider manual checking, a method already used effectively by other service providers; and
- (c) before rectifying the current practice and introducing new checking arrangements, to promulgate clear guidelines for staff reference and mount extensive publicity to alert and educate the public.

## Home Affairs Bureau (“HAB”) and Constitutional and Mainland Affairs Bureau (“CMAB”)

Case No. OMB/DI/189

Effectiveness of Administration of  
Code on Access to Information

(Investigation declared on 26 February 2009 and  
completed on 22 January 2010)



### Background

It is Government policy to be as open and transparent as possible. Since 1995, the Code on Access to Information (“the Code”) has authorised, and required, civil servants to provide Government-held information to the public unless there are specific reasons under the Code for not doing so. Until 30 June 2007, HAB was responsible for administration of the Code. Since then, CMAB has taken charge.

2. Our investigation examined Government measures to ensure understanding of and compliance with the Code among departments and officers and to promote public awareness.

### The Code

3. The Code, embracing all Government departments and two public bodies, comprises two parts. Part 1 covers the scope of the Code, application procedures, target response times, avenues for departmental review and for complaint to The Ombudsman; while Part 2 sets out 16 categories of information to which public access may be refused.

4. Each department should designate an Access to Information Officer (“AIO”) for promoting and overseeing the application of the Code, coordinating in-house staff training as well as ensuring compliance with its provisions and procedures. From the outset, Government has drawn up Guidelines (in English only) to help departments interpret and apply the Code.

### Observations and Comments

5. We found deficiencies among some departments, displaying considerable misunderstanding of the provisions and unfamiliarity with its procedural requirements even after well over a decade of implementation. Some had refused requests for information without giving any reason or with reasons not specified in the Code; others had misused the reasons specified in the Code. Some had failed to inform requesters of the avenues of departmental review and complaint to our Office, yet others had overlooked their responsibility to coordinate replies involving multiple departments.

6. **Inadequate Training.** HAB did not provide training for AIOs from 1997 to 2004 or for other departmental supporting staff during 2002 to 2007.
7. **Inadequate Publicity.** Since the media releases and broadcasts from 1995 to 1997, there had been no positive media publicity for 11 years.
8. The Guidelines do not have a Chinese version to facilitate public understanding. Moreover, the homepages of some departments are not hyperlinked to the webpage on the Code and do not even have a brief introduction of the Code to highlight the public's right to information.
9. **Inadequate Promotion within Government.** During the decade 1997 to June 2007, only two general circulars and one memorandum had been issued to remind departments of the provisions of the Code.
10. **Departmental Guidelines Outdated.** Some departments had drawn up internal circulars/guidelines on the Code, modelled on a 1996 sample. However, there has been no monitoring or updating by HAB.
11. **Inactive Monitoring of Compliance.** HAB had not carried out any updating of the format of the quarterly return on Code-related requests.
12. **Inadequate Extension to Public Bodies.** As more public bodies come into existence, it is essential that they be brought under the spirit of the Code and advance the principle and policy of transparency of public administration.

## Recommendations

13. The Ombudsman made 11 recommendations to CMAB for more effective administration of the Code, including:
  - (a) to organise more, and timely, training for AIOs;
  - (b) to work with departments to organise more training for other staff;
  - (c) to provide a Chinese version of the Guidelines;
  - (d) to require all departments' homepages to introduce the Code briefly and to be hyperlinked to the webpage on the Code;
  - (e) to advise departments to ensure that their guidelines are clear, correct and up-to-date; and
  - (f) to follow up with other public bodies within The Ombudsman's purview for them to adopt the Code or some similar guide.
14. CMAB accepted these recommendations.

## Hong Kong Examinations and Assessment Authority (“HKEAA”)

Case No. OMB/DI/182

System for Development of

Question Papers in Public Examinations

(Investigation declared on 26 June 2008 and completed on 27 May 2009)



### Background

As public examinations have far-reaching implications on the future of young people in Hong Kong and our reputation for education and examinations elsewhere, the community expects the highest standards in the setting of question papers. However, despite HKEAA's efforts to develop a culture of continuous improvement, we found significant errors in some question papers in 2008 stemming from deficiencies in HKEAA procedures and processes and the mindset among some staff.

### Observations and Comments

2. **Key Responsibilities Not Clearly Defined.** The Manager-Assessment Development (“M-AD”) has a key role in ensuring that question papers are free of error and ambiguity. However, this was not clearly stated in the manuals or guidelines.
3. **Conflicting Roles of Key Personnel.** An M-AD who had set the question was also responsible for proofreading the question paper.
4. **Ineffective Proofreading Process.** Elaborate procedures and guidelines for checking and proofreading by multiple rounds time and again failed to identify quite obvious errors.
5. **Inadequate Documentation of Key Records.** M-ADs had amended draft questions on soft copy without keeping any official records. This makes it difficult to trace and check the process of question development.
6. **Complacency about Errors.** Some HKEAA staff considered careless mistakes unavoidable and seemed to rely on the “safety net” of revising marking schemes after examinations to accommodate errors or imperfections in the questions.
7. **Reluctance to Acknowledge and Failure to Rectify Errors.** HKEAA did not rectify an ambiguous question even in subsequent publication, thus continuing to mislead teachers and students.
8. **Inadequate Guidelines for Handling Complaints.** HKEAA's guidelines gave ambivalent and inadequate advice on the handling of some kind of complaints.
9. **Inadequate Remedial Measures.** HKEAA had been prompt in reviewing the 2008 examinations and in drawing up remedial measures. However, those measures tended to be incident-specific and procedure-oriented, addressing the symptoms rather than the root causes of the problems.



## Recommendations

10. The Ombudsman made 13 recommendations to HKEAA, including:
  - (a) to impress upon all staff the importance of HKEAA as an authority for public examinations with far-reaching and long-range impact on our community;
  - (b) to review relevant guidelines;
  - (c) to explore means of generating more external feedback; and
  - (d) to report to the HKEAA Council any errors requiring significant revision of the marking scheme.
11. HKEAA accepted these recommendations.

## Housing Department (“HD”)

Case No. OMB/DI/178

**Handling of Complaints Involving Claims**  
(Investigation declared on 5 October 2008 and completed on 24 August 2009)

### Background

HD has clear procedures for handling complaints that involve claims for damages, but was often found not to comply with them.



### Existing Procedures

2. Where a complaint involves a claim for damages, HD should itself process the complaint following prescribed steps and timelines, to rectify problems, if any. Simultaneously:
  - (a) if the claim is made against HD, the Department will refer it to the loss adjuster of its insurer for processing under HD's insurance arrangement; and
  - (b) if the claim is made against a contractor, HD will refer it to the contractor for handling direct.

## Observations and Comments

3. **Claims against HD.** In the cases studied, HD had failed to process the complaints and identify problems for follow-up action or rectification. There had been practically automatic referral of the claims to the insurer's loss adjuster, to the total exclusion of any further attention from HD. However, the loss adjuster acts only with reference to the insurance policy. As service and management issues are outside the scope of the policy, HD must conduct its own parallel investigation to get at their root cause(s) for rectification.

4. HD requires the loss adjuster to process claims according to prescribed procedures and service standards. However, it sometimes failed in monitoring the loss adjuster's work progress.

5. **Claims against Contractors.** Contractors were not subject to any service standards, but had to report to HD the progress and outcome of the claims they handled. HD monitored such cases loosely and did not have complete records.

6. **Assistance to Claimants.** In some of the cases studied, HD blindly followed the loss adjuster's advice and refused to give the claimants reasonable help. In our view, HD should as far as possible accommodate claimants' request for information and assistance.

## Recommendations

7. The Ombudsman made 11 recommendations to HD, including:
  - (a) to remind staff to follow the procedures, in particular to conduct parallel investigation of complaints other than the claims involved;
  - (b) to review and step up monitoring of claims handling by the loss adjuster;
  - (c) to ask contractors for progress reports on claims and to keep records of such cases; and
  - (d) to provide information and other forms of assistance to claimants in need.
8. HD accepted all our recommendations.

## Social Welfare Department ("SWD")

Case No. OMB/DI/167  
Granting of Disability Allowance and  
Processing of Appeals by Social Welfare Department  
(Investigation declared on 20 November 2008 and  
completed on 29 October 2009)

### Background

The Disability Allowance ("DA") scheme under SWD provides non-means-tested and non-contributory financial assistance to severely disabled persons, irrespective of their employment status.



### Our Observations

2. This study revealed:
  - (a) problems with the eligibility criteria;

- (b) SWD's shirking of responsibility for deciding on DA applications; and
- (c) lack of transparency of deliberations on appeals.

### **Eligibility Criteria**

- 3. Although doctors have expressed difficulty in assessing social and environmental factors of DA applications, such as "significant restriction in working in the original occupation", SWD maintains that doctors are fully competent to make assessment and that SWD staff are not in a position to challenge doctors' assessment. This has left a void in the assessment.
- 4. Furthermore, the design of the Medical Assessment Form ("MAF"), which provides the framework for doctors' assessment, does not facilitate consistency and verification.
- 5. The reference of "100% loss of earning capacity" in the eligibility criteria is incongruous and misleading, as the original design of the scheme was intended not to take into account applicants' employability. Moreover, the classification of such categories as "mental impairments" and "visceral diseases" is crude and outdated.

### **Role of SWD**

- 6. By confining its role to merely checking residence status and double benefits, SWD has often failed to spot even blatant discrepancies and obvious inconsistencies in DA grants.
- 7. As vote controller, the Director of Social Welfare should ensure that a system for monitoring and control is in place for economy, efficiency and effectiveness in the granting of DA. SWD's current system is inadequate.

### **Appeals – Transparency of Deliberations**

- 8. The lack of transparency of the deliberations of the Social Security Appeal Board, which considers DA-related appeals, makes it difficult for doctors making subsequent assessment to understand the basis of previous DA assessments and the Appeal Board's decisions.

### **Recommendations**

- 9. The Ombudsman made eight recommendations to SWD, including:
  - (a) to review and revise the layout, format and contents of the MAF to enable clear documentation and to facilitate doctors' systematic assessment;
  - (b) to arrange regular audit of cases for systemic irregularities and deficiencies; and
  - (c) to consider an overall review of the DA scheme, covering the eligibility criteria, roles of medical doctors and SWD and mechanism for assessment.

## Transport Department (“TD”)

Case No. OMB/DI/187

System for Processing Applications for Multiple Transfer/Retention of Vehicle Registration Marks

(Investigation declared on 30 June 2008 and completed on 2 June 2009)

### Background

While handling a complaint, this Office found possible loopholes in TD’s system for processing applications for multiple transfer/retention of vehicle registration marks (“VRMs”).

### The Procedures

2. A vehicle owner may apply to TD to transfer the VRM of one vehicle to another or hold the VRM in abeyance for a period not exceeding 12 months. Where two or more vehicles and owners are involved, multiple transfer/retention of VRMs would be processed sequentially.
3. When one makes a single application and opts to accept a VRM randomly assigned by TD’s computer instead of keeping the original VRM, one would not be allowed to see that VRM until after the procedure is completed and the fee paid. This is to forestall applicants seeking reallocation when dissatisfied with the computer-assigned VRM. With multiple transfer/retention of VRMs, an interim VRM will also be generated by the computer, to be cancelled upon transfer of the original VRM. The applicant will not be allowed sight of the interim VRM, unless he/she decides before the transfer is completed to accept it instead of the original VRM.

### The Complaint Case

4. Mr A and Ms B applied for multiple transfer/retention of VRMs at a Licensing Office of TD. After completing all the procedures, they saw the interim VRM and wanted it instead of the original VRM. As their application had already been processed, the officer refused their request.
5. They then complained against TD for depriving them of the right to take the interim VRM. In response, when repeating the procedures, TD exceptionally let them take the new interim VRM if it suited them.

### Our Observations

6. As applications for multiple transfer/retention of VRMs involve several vehicle owners and entail complex procedures, if applicants are allowed to consider accepting interim VRMs, it would prolong the process and hence the waiting time for other applicants.
7. To ascertain how Mr A and Ms B could have seen the interim VRM, we visited the Licensing Office and found that TD staff would write down the interim VRM on the first page of the application form. The VRM might, therefore, have become visible to Mr A and Ms B.

8. In their case, the officer quite correctly at first rejected their request for the interim VRM after they had seen it. However, eventually, TD gave in and let them take a newly assigned interim VRM if they preferred it to the original VRM. In effect, TD was allowing them a choice of VRMs, thus deviating from established procedures and verging on abuse of power.

## Recommendations

9. The Ombudsman urged TD to:
- (a) keep interim VRMs from the sight of applicants; and
  - (b) remind staff to uphold the principle of fairness and not give applicants special treatment just because they complain.

## Annex 11

# Summaries of Selected Direct Investigation Assessments

### Mandatory Provident Fund Schemes Authority ("MPFA")

Case No. OMB/DI/198

Administration of Injection of Government Funds into Accounts of MPF and ORSO Scheme Members  
(Assessment commenced on 16 April 2009 and completed on 29 March 2010)



As part of the 2008-09 Budget, the Administration had decided to inject \$6,000 into the retirement scheme account of each employee/self-employed person whose aggregate monthly income did not exceed \$10,000.

2. After the MPFA started in early March 2009 to inject those funds into the accounts of some 1.4 million eligible persons, there were considerable media reports on erroneous cases, with 35 enquiries/complaints received by this Office. The Ombudsman initiated a direct investigation assessment of the issue.

### Insufficient Lead-time for Preparation

3. MPFA had anticipated a lead-time of approximately **nine months** for preparatory work, including modification of trustees' scheme administration systems and data extraction, consolidation and matching for finalising the list of eligible recipients. In the event, injection started about **eight months** after the necessary legislative amendments were passed – a "very tight" schedule according to MPFA.

4. Some erroneous injections could have been avoided, if MPFA had more lead-time for preparation.

### Erroneous Injection

5. MPFA has identified about 12,900 cases of erroneous injection into ineligible accounts. Some 40% were caused by employers reporting zero income for employees over 65 and, therefore, not required to make mandatory contribution – a situation unforeseen by MPFA; 49% by a trustee's non-compliance with MPFA guidance and a scheme administrator having extracted income for the wrong months due to programming errors.

6. Nevertheless, MPFA was quick to identify the causes of error and prompt to rectify by cross-checking the data and reviewing the related programmes.

## Withdrawal of Injection

7. MPFA is empowered to recover an injection within **six months** if it reasonably believes that that injection should not have been made. The six-month limit was based on MPFA's original work plan: three months (up to 31 July 2009) for seeking review and two months for investigation.

8. In February 2009, in response to legislators' request, the Administration and MPFA extended the deadline for seeking review to 30 September 2009. However, the Administration did not correspondingly change the six-month timeframe stipulated for withdrawing injection.

9. MPFA had repeatedly reminded the public that persons who considered themselves eligible for injection should seek review by the above deadline and recipients who considered themselves ineligible should "contact the MPFA as soon as possible". MPFA had anticipated that some might still not contact it early enough to effect the withdrawal of injection. Consequently, it proposed in April 2009 to the Administration that an earlier deadline for seeking review be set for withdrawal. However, the proposal was not accepted. In the event, MPFA advertised in the local press to ask the recipients concerned to "contact the MPFA on or before 20 August 2009" so that it would have sufficient time to process the withdrawal cases.

10. In extreme cases, the injection might not be recoverable.

## Suggestions

11. The Ombudsman suggested that for similar exercises in future, MPFA and the Administration should:

- (a) allow sufficient lead-time to prepare for implementation;
- (b) conduct random check on data verification and for programming errors, prior to implementation;
- (c) devise better timeframe(s) to safeguard the interests of all parties concerned, including the public coffers; and
- (d) arrange timely publicity to ensure proper and smooth implementation.

## Annex 12

# Summaries of Selected Cases Concluded by Preliminary Inquiries

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

### Cases Concluded under Rendering Assistance/Clarification

#### Hospital Authority (“HA”)

**Case No. OMB 2009/0552 – Drug labels**

**Allegation: pharmacy staff affixing a wrong drug label**

#### Details of Complaint

The complainant went to a hospital under HA for follow-up consultation. She was given medication and left. On her way home, she received a call from a staff member of the hospital's pharmacy asking her to read out the dosage on all her drug labels. The staff then advised that her doctor might have made a mistake and urged her to return to the pharmacy immediately.



2. On returning to the pharmacy and surrendering her medication, the complainant saw the staff just removing the original label and putting a new one onto the bag. All the medicine was then returned to her. She noticed that the dosage on the new label was different. However, the staff did not explain to her whether the mistake was by the doctor or by the pharmacy staff.

#### Human Error

3. HA stated that when dispensing the medication, the pharmacy staff had mistakenly affixed the label for another patient onto the complainant's drug bag. The staff responsible for issuing the medication did not notice such error when double-checking the data. The mistake was thus not rectified in time. HA explained that it was purely a human error and not any flaw in its mechanism or inadequate guidelines. Nevertheless, had the pharmacy staff explained the situation to the complainant over the telephone, it would have eased her worry.

#### Possible Serious Consequences

4. This Office considered the incident to have been due to the pharmacy staff affixing the wrong label and that could have serious consequences. HA and the hospital must not take the incident lightly. They must instruct the staff to observe the guidelines and follow every step carefully in dispensing and issuing medication.



5. In the end, the hospital not only gave the complainant a verbal explanation but also issued a written apology. Meanwhile, the management of the pharmacy had reminded its frontline staff to follow the dispensing procedures strictly.

### A case of staff negligence

## Hospital Authority (“HA”)

**Case No. OMB 2009/1176 – Hospital charges**

**Allegation: unreasonably levying an administrative charge and claiming an unidentified debt**

### Details of Complaint

The complainants, Mr and Mrs A, indicated that Mrs A’s mother (“Madam B”) had received medical treatment in a hospital under HA but they did not have enough money to settle her fees fully for hospitalisation. The hospital thus allowed them to pay the outstanding amount by 12 monthly instalments.



2. After they had paid the first ten instalments as scheduled, a hospital staff member telephoned them to demand an additional administrative charge. However, the hospital had earlier never mentioned such a charge. Meanwhile, HA had filed a claim with the Small Claims Tribunal to recover an unidentified debt from the late Madam B. The complainants considered the administrative charge and the claim by HA unreasonable.

### Administrative Charge for Payment by Instalments

3. Under HA’s current policy, if a patient is unable to settle his fees for hospitalisation at the time of discharge due to financial difficulties, he may apply for payment by instalments. The hospital will levy an administrative charge of 5% to 15% on the outstanding amount depending on the situation.

4. The hospital approved the complainants’ application for payment of Madam B’s fees by instalments. Nevertheless, the hospital staff failed to follow established procedures to include the administrative charge in the instalment plan. There was no mention of such charge in the confirmation letter either.

### Filing a Claim without Thorough Examination

5. On the other hand, after the hospital had approved the complainants’ application for payment by instalments, the computer system of its Accounts Office continued to issue hospital bills and final notices to Madam B. When the latest final notice was returned undelivered, the hospital staff made several vain attempts to contact Madam B. The case was then referred by the hospital

Accounts Office to HA for follow-up action without first examining the case thoroughly. As a result, the earlier approval for payment by instalments went unnoticed and HA filed a claim to recover from Madam B the outstanding fees plus administrative charge for late payment.

## Our Comments

6. Had the hospital staff been more prudent in examining the relevant documents, they should have noticed that the amount of outstanding debt had steadily decreased on the complainants' payment by instalments. There was staff negligence. Furthermore, the hospital staff concerned had failed to include the administrative charge in the instalment plan and other relevant documents when the instalment application was approved. As a result, the complainants were not aware that they would be required to pay an administrative charge. This was, therefore, omission on the part of the staff.

7. Subsequently, HA waived the administrative charge, withdrew its claim and apologised to the complainants. Meanwhile, HA urged the hospital to formulate and implement improvement measures as soon as possible to prevent recurrence of such incidents.

**A case of staff negligence and omission**

## Housing Department ("HD")

**Case No. OMB 2009/2352 – Public housing rent**

**Allegation: failing to handle properly a complaint about payment of rent**

### Warning Despite Payment

The complainant paid a month's rent at a convenience store but still received a reminder from HD. Despite several visits to the estate management office to clarify the matter, she received another reminder.



2. Each time the complainant received the reminder, she went to HD's property services management contractor ("PSC"). She produced her receipt as proof that she had paid rent. However, on both occasions, the staff only photocopied the receipt for records but took no follow-up action. When she later received HD's warning letter for rent overdue, she approached the estate management office again for assistance and was advised that she should enquire at the convenience store.

### Tardy Action by HD

3. One month after the complainant was pursued for outstanding rent, the estate management office reported the incident to HD's local District Tenancy

Management Office (“DTMO”). Another month later, HD requested the bank collecting rents to conduct an investigation. Meanwhile, the complainant was advised by the estate management office to pay the rent again to avoid getting a “Notice to Quit” from HD.

4. The bank’s investigation found that a computer system failure at the convenience store had resulted in the loss of the complainant’s payment record. The relevant data had, therefore, not been transmitted to HD’s computer system resulting in her rent payment record not being updated.

### HD’s Comments

5. HD stated that the case was not handled promptly and properly because the PSC staff had been tardy in referring the complaint to DTMO. Moreover, HD staff had not sought an immediate investigation by the bank. HD apologised to the complainant and directed PSC to enhance the communication skills of its frontline staff and instruct them to be more proactive in handling tenants’ enquiries and complaints. HD also requested the rent collection service contractor to upgrade the computer system.

### Our Comments

6. HD should learn from this case and enhance staff sensitivity to complaints concerning rent payment for follow-up action prudently and promptly.

**A case of lack of positive action**

## Judiciary Administrator (“JA”)

**Case No. OMB 2008/5326 – Loss of mail**

**Allegation: failing to reply to the complainant’s letters, two of which were sent by registered mail**

### No Reply to Letters

The complainant alleged that the High Court Registry under JA had failed to reply to his three letters to the Taxing Master of the High Court over the span of one month. Two were even by registered mail.

2. On 20 October 2008, the complainant sent a letter by ordinary mail to the High Court Registry, requesting partial refund of taxing fee in relation to a case. As there was no response, he sent a second letter by registered mail on 5 November followed by a third one by double registered mail on 24 November. However, he still had no reply.

### Letters Remained Missing

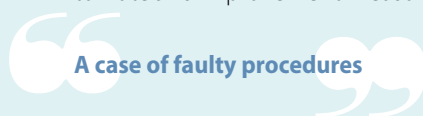
3. Upon our referral of the complaint, with copies of the letters sent by the complainant, JA directed an internal search but the staff concerned could not trace those three letters. The Post Office confirmed their delivery but the staff in the High Court Registry responsible for processing incoming mail denied having ever seen those letters.

## Improvement for Mail Handling

4. JA then conducted a thorough investigation into how incoming mail was handled. However, it was not possible to ascertain why those letters were missing. Nevertheless, JA identified certain deficiencies of the High Court Registry in handling incoming mail. These included the lack of records for incoming mail and different processing by different staff.
5. As a remedy, JA adopted the following measures:
  - (a) the receipt and despatch staff would log all incoming registered mail and the recipient officers acknowledge receipt of such mail;
  - (b) the judicial clerks concerned would log all registered mail received and acknowledge receipt on behalf of their judicial officers; and
  - (c) all staff concerned were reminded that all incoming mail, including ordinary mail, must be properly and carefully handled.
6. Finally, JA referred copies of the letters to the Taxing Master for reply to the complainant and apologised to him for the delay caused.

## Our Comments

7. There were evidently loopholes in the practice and procedures of the High Court Registry for handling incoming mail. The Ombudsman was pleased to note JA's improvement measures to prevent recurrence.



## Legal Aid Department (“LAD”)

**Case No. OMB 2008/6066 – Bill of costs**

**Allegation: unreasonably refusing to provide a Chinese translation**

### Details of Complaint

The complainant was granted legal aid by LAD to seek compensation from her former employer for injury at work. The parties subsequently reached a settlement. LAD then sent her the bill of costs, provided in English by its assigned lawyers, for her consent. The complainant asked for a Chinese version of the bill but LAD refused. The complainant argued that since the Basic Law specified both Chinese and English as the official languages of Hong Kong, LAD should provide the bill in Chinese free of charge to those who do not know English.



## Comments from LAD

2. LAD considered that as the bill was issued by the assigned lawyers, the complainant could ask for a Chinese translation from them but there would be a charge. In fact, LAD staff had explained to her several times over the telephone the content of the bill. In its written reply (in Chinese) to the complainant, LAD had also set out in detail all the charges for medical reports it had paid for her. She should be able to understand the various items on the bill.

## Our Comments

3. Although LAD did not provide a Chinese version of the bill, it had verbally explained the details to the complainant.

4. Assigned lawyers are appointed by LAD to provide legal service on its behalf. As legal aid recipients have to pay for such service, they have a right to ask for a breakdown of the costs incurred. This Office considered that LAD should review its current policy and consider giving recipients such bills in Chinese or English as they request to facilitate their understanding.

**A case of lack of consideration for clients**

## Leisure and Cultural Services Department ("LCSD")

**Case No. OMB 2009/1258 – Sports facilities**

**Main allegation: unreasonably reserving table tennis tables for disabled athletes in a sports complex, resulting in a waste of resources**

### The Complaint

The complainant alleged that a LCSD sports complex had reserved ten table tennis tables for disabled athletes. However, some of those tables were always idle with the nets removed. He was thus unable to book the tables for practice. He considered the LCSD arrangements an unfair and unreasonable waste of resources.



### LCSD: Training Needs

2. LCSD indicated that the Hong Kong Sports Institute ("HKSI") had to be converted into a competition venue for the 2008 Beijing Olympic equestrian events and redeveloped later. To cater for the daily training needs of athletes, some recreational and sports facilities in LCSD venues would be on loan to HKSI. Consequently, a number of table tennis tables in the sports complex in question had been reserved for elite and handicapped athlete training.

3. Disabled athletes are wheelchair-bound and need more room for manoeuvring. Mentally handicapped athletes need an undisturbed environment to concentrate on their training for best results. A buffer zone

was thus set up by reserving some of the table tennis tables. The nets were removed to ensure that no one would enter the zone to play and distract the athletes in training.

4. LCSD had been closely monitoring the utilisation of sports facilities by HKSI athletes to adjust the number and time slots to be reserved. When the first phase of the Institute's redevelopment is completed in 2010, facilities on loan to HKSI would be withdrawn and those in the sports complex concerned fully available to the public again.

## Our Comments

5. The special arrangement had to be made to meet the special needs of physically and mentally handicapped athletes. It was, therefore, reasonable and not wasteful of resources.

6. However, LCSD had failed to explain the arrangement clearly, in particular its purpose and the rationale. It was a pity that misunderstanding and various complaints resulted.

## Clearer Information Needed

7. We suggested that LCSD enhance its clarity of information, say, by posting conspicuous notices in the sports complex and on its website. It should explain to the public why and how facilities were loaned to HKSI. LCSD subsequently implemented our suggestion.

**A case of lack of clarity of information**

## Leisure and Cultural Services Department ("LCSD")

**Case No. OMB 2009/2147 – Overdue fines**

**Allegation: imposing unreasonable overdue fines on junior library card holders**

### Fine on Adult Rate

The complainant's two daughters each borrowed ten compact discs ("CDs")

from a public library under LCSD with their junior library cards. They were returning the discs late and the library charged them fines according to the rates for adult library materials.

2. The complainant noted that her daughters' junior library cards were obtained through their school, which had not given them any information on library regulations at the time of application. Consequently, she had not known that a junior library card could be used to borrow from an adult library. She considered LCSD's overdue fines unreasonable and repeatedly asked its staff



to fine at the rates for children's library materials. She was dissatisfied that her request had been rejected.

## Overdue Fines

3. LCSD does not restrict the kind of library materials a junior or adult library card holder may borrow. They are free to borrow from either a children's or an adult library.
4. Under the Libraries Regulation, an overdue fine is imposed on each library material returned late. The charge is \$1.5 per day or part of a day for each library material borrowed from an adult library and \$0.5 for an item borrowed from a children's library.

## Case Handled Properly

5. The complainant evidently thought that fines would be charged on the basis of the type of library card used and so considered LCSD's handling of her case improper. The Department had, in fact, explained its library services and regulations through various channels and clear signs were displayed in the public library differentiating the adult library and the children's library. The complainant's allegation against LCSD was, therefore, unjustified.
6. This Office considered LCSD to have handled the case properly. As the complainant's daughters did borrow the CDs from an adult library and were late in returning them, they should pay the fines in accordance with the Libraries Regulation.

## Official Receiver's Office ("ORO")

### Case No. OMB 2008/4587 – Handling incoming cheques

#### Allegation: failing to follow up properly the complainant's bankruptcy case

## Cheque Lost

The Court made a bankruptcy order in 2007 against the complainant and appointed the Official Receiver as the trustee of the complainant's property. The complainant reached an agreement with ORO to repay by instalments a sum to be deposited into her bankruptcy estate account.

2. At the end of 2007, the complainant sent two cheques to ORO to pay for the first two instalments. However, she later found that only one cheque was presented. On checking with ORO, she learned that the other cheque had been lost. She alleged that the case officer had failed to follow up her case properly.

## Review of Procedures Promised

3. ORO confirmed that it did receive the two cheques from the complainant. However, only one was accounted for as the other cheque was lost. As some months had passed, the case officer could not recall what exactly had



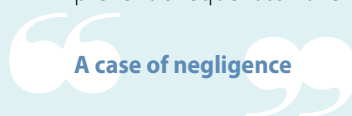
happened or any details of her conversation with the complainant. ORO regretted the loss of the cheque and undertook to review the procedures for handling cheque payments to avoid recurrence.

## Our Findings

4. The case officer had obviously failed to handle this case properly. She took no follow-up action after receiving the complainant's enquiry about the cheque not yet presented. It was not until another officer took over the case nine months later that the incident was revealed.

## Apologies Offered and Improvement Introduced

5. Upon our inquiry, ORO not only apologised to the complainant but also reviewed the procedures for handling incoming cheques. New procedures to prevent cheque loss have been adopted since April 2009.



## Student Financial Assistance Agency ("SFAA")

**Case No. OMB 2007/5941 – Continuing Education Fund**

**Allegation: inflexibility in handling an application for reimbursement of course fees**

### Details of Complaint

The complainant, having attended consecutively two English language courses reimbursable under the Continuing Education Fund ("CEF"), sat for a benchmark test and attained a level above the requirements for reimbursement of fees for both courses. He sought reimbursement from SFAA and exemption from the latter's "one-to-one" rule for claimants to submit one benchmark test result to support reimbursement for each course. However, SFAA refused to exercise flexibility.

### Our Comments

2. The purpose of the "one-to-one" rule was simply to ensure that recipients of CEF had attained a specific level of language proficiency after taking a course. Given that the complainant had attained language proficiency well above the level required for both courses, we saw no reason why SFAA should insist on his sitting for the same test again just to adhere to the rule.

### Our Suggestion

3. Accordingly, we suggested that SFAA review the "one-to-one" rule. In the event, the latter has abolished the rule from 1 September 2009.





## Annex 13

# Index of Cases Concluded by Full Investigation

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Agriculture, Fisheries and Conservation Department</b>			
2008/5307	Providing incorrect information and advice to the complainant in connection with her application for adoption of two stray kittens	Partially substantiated	4
2009/0718	Mishandling of a complaint about illegal breeding of pigeons	Unsubstantiated	2
<b>Buildings Department</b>			
2008/1362	Shirking responsibility in handling a report on leakage of communal drainage pipes	Substantiated other than alleged	2
2008/3209	Failing to properly handle a seepage complaint	Substantiated	3
2008/4569	Delay in handling a seepage complaint	Substantiated	3
2009/1033	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landslide in June 2008	Unsubstantiated	0
2009/1229	Failing to follow up a complaint about illegal structures which blocked the escape route in a building	Unsubstantiated	2
<b>Civil Aid Service</b>			
2008/3237	Irregularities in action against a visitor who was going through immigration clearance	Unsubstantiated	1
<b>Civil Engineering and Development Department</b>			
2009/1034	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landslide in June 2008	Unsubstantiated	1
<b>Correctional Services Department</b>			
2009/0071	(a) Ignoring an inmate's complaint about low temperature (substantiated); and (b) Ignoring an inmate's need for physical exercise (unsubstantiated)	Partially substantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Drainage Services Department</b>			
2009/0408	Failing to take measures to eliminate threat of flooding caused by land filling activities	Unsubstantiated	0
2009/1035	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landslide in June 2008	Partially substantiated	2
2009/2233	Ineffective control over illegal discharge of waste water from a pig farm and a tofu factory near the complainant's residence	Unsubstantiated	0
<b>Electrical and Mechanical Services Department</b>			
2009/3479	(a) Mishandling a complaint; and (b) Providing contradictory replies	Substantiated	2
<b>Environmental Protection Department</b>			
2009/1315	Lack of publicity on requiring all property management companies to use ultra low sulphur diesel in their standby generators	Unsubstantiated	0
2009/2234	Ineffective control over illegal discharge of waste water from a pig farm and a tofu factory near the complainant's residence	Unsubstantiated	0
2009/2349	Failing to eradicate the odour nuisance caused by a landfill in Tseung Kwan O	Unsubstantiated	1
2009/2719	(a) Unfairness in arranging waste collection contractors in using a re-opened refuse transfer station after a fire (substantiated); and (b) Inefficient delivery of an exhaust ventilation system from overseas (unsubstantiated)	Partially substantiated	1
<b>Fire Services Department</b>			
2009/0303	Shirking responsibility in handling a complaint about illegal structures which blocked the escape route in a building	Unsubstantiated	0
<b>Food and Environmental Hygiene Department</b>			
2007/5219	Failing to discover that a restaurant in the clubhouse of a private estate had been operating unlicensed for years and not replying to enquiries	Substantiated	5
2008/1363	Shirking responsibility in handling a report on leakage of communal drainage pipes	Substantiated other than alleged	1
2008/3210	Failing to properly handle a seepage complaint	Substantiated	3
2008/4570	Delay in handling a seepage complaint	Substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2008/5141(I)	Unreasonable refusal to disclose the amount of melamine in food samples tested satisfactory	Substantiated	2
2009/0302	Shirking responsibility in handling a complaint about illegal structures which blocked the escape route in a building	Unsubstantiated	0
2009/2235	(a) Ineffective control over illegal discharge of waste water from a pig farm and a tofu factory near the complainant's residence (unsubstantiated); and (b) Failure to reply to the complainant's letter (substantiated)	Partially substantiated	0
2009/3912	Failing to take effective measures to resolve the perennial problem of waste disposal on the Government land in front of a refuse collection point	Substantiated	0
<b>Government Property Agency</b>			
2008/3649	Mishandling a complaint about street sleepers at a Government complex	Substantiated	2
<b>Government Secretariat – Chief Secretary for Administration's Office</b>			
2009/0296	Poor attitude of 1823 Call Centre staff and inefficiency in handling complaints	Partially substantiated	0
<b>Government Secretariat – Commerce and Economic Development Bureau</b>			
2006/3082	Impropriety in processing an application for funding support under the Patent Application Grant scheme	Partially substantiated	1
<b>Government Secretariat – Development Bureau</b>			
2008/6047	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landside in June 2008	Partially substantiated	1
<b>Government Secretariat – Education Bureau</b>			
2007/4317	Impropriety in handling the complainant's application for an incentive grant	Partially substantiated	2
2009/3306	Lack of consideration and coordination in transport arrangements for cross-border students	Unsubstantiated	0
2009/3853(I)	Refusal of the complainant's request for information on the number of English classes in secondary schools in 2010/11	Unsubstantiated	0
<b>Government Secretariat – Transport and Housing Bureau</b>			
2009/1372	Failing to consult the complainant in advance about a proposed clearance operation	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Highways Department</b>			
2009/1036	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landslide in June 2008	Unsubstantiated	0
<b>Home Affairs Department</b>			
2007/5804	Failing to ascertain whether the clubhouse of a private estate continued to operate without a Certificate of Compliance	Unsubstantiated	1
2008/1516	Failure to conduct proper public consultation on a footbridge project and to reply to the complaint	Partially substantiated	2
2008/2229	Delay in processing an application for rates exemption	Substantiated	3
2008/3128	Delay in processing an application for rates exemption	Substantiated	3
2008/3177	Mishandling a complaint about street sleepers at a Government complex	Unsubstantiated	0
2008/4631	Shirking responsibility for dealing with illegal parking of bicycles at a public transport interchange	Unsubstantiated	0
2008/4710	Inappropriate repavement of a hiking trail	Partially substantiated	1
2008/5171	Failing to resolve a dispute over the use of a football pitch between a school and the local villagers	Unsubstantiated	0
2009/2672	Mishandling public consultation on the Shatin to Central Link	Unsubstantiated	0
2009/3604	Failing to open a public toilet for public use since its completion in 2003	Partially substantiated	2
<b>Hong Kong Examinations and Assessment Authority</b>			
2008/3188	Unreasonably refusing to adjust the marks of some candidates who were affected by noise during a listening examination	Unsubstantiated	0
2008/4096	Unreasonably refusing the complainant's request to – (a) see her daughter's remarked examination scripts (substantiated); and (b) inform her of the cut scores for certain subjects (unsubstantiated)	Partially substantiated	2
2008/4830	Unreasonably rejecting a candidate's application for using computer in an examination and asking the candidate to pay an exceedingly high fee when it later agreed to provide a computer for the purpose	Substantiated	1
2009/3337	Lack of mechanism to enable candidates' performance at Oral English examinations to be properly reviewed	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Hong Kong Housing Authority</b>			
2009/2537	Providing misleading information in the sales brochure about pet keeping in a Private Sector Participation Scheme estate	Partially substantiated	0
<b>Hong Kong Housing Society</b>			
2009/2659	Failing to take enforcement action against tenants who installed air-conditioners and laundry supports on external walls	Substantiated	4
<b>Hospital Authority</b>			
2008/6003	Unreasonably subjecting the complainant to review every three years despite an earlier assessment of permanent disability	Substantiated	0
2009/2970	Unreasonably recommending that the complainants' relative withdraw from their family case of Comprehensive Social Security Assistance and apply for the Assistance as a single person	Unsubstantiated	0
<b>Housing Department</b>			
2008/1009	Refusing, without good reasons, to compensate a tenant for damage to his property from a flush water pipe bursting	Substantiated	1
2008/1816	(a) Failing to take up responsibility to maintain the common facilities it owned (substantiated); and (b) Delay in delineating the responsibility for maintaining the common facilities (unsubstantiated)	Partially substantiated	1
2008/4633	Unreasonably rejecting the complainant's claim for damages caused by the bursting of a flush water pipe in his public housing unit	Unsubstantiated	0
2008/4764	Misleading the complainant such that she could not enjoy the full credit in purchasing her flat under the Tenants Purchase Scheme	Unsubstantiated	0
2008/5018	(a) Failure to properly maintain the flush water supply system of a public housing estate, resulting in frequent suspension of flush water supply; and (b) Delay in posting up notices of suspension of flush water supply and failure to explain the causes of suspension	Unsubstantiated	0
2008/5021	Unilaterally cancelling the "school bus diversion plan" in a public housing estate, leaving the problem of noise nuisance unresolved	Unsubstantiated	0
2008/6052	Unreasonably refusing to compensate the complainant whose range hood was damaged by a burst communal flush water pipe	Partially substantiated	1

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2008/6229	Failure to resolve for the complainant the long-standing problem of noise nuisance caused by the unit upstairs	Unsubstantiated	2
2009/0200	Failing to state clearly to the complainant that he could not seek another review of his application for public housing	Partially substantiated	0
2009/0914	(a) Unreasonably querying whether the complainant's teenage children should continue to live with their grandparents in a public housing unit (substantiated); and (b) Delay in processing the complainant's application for deletion of himself and his wife from public housing tenancy (unsubstantiated)	Partially substantiated	2
2009/1104	Unreasonably rejecting the complainants' public housing application, thereby delaying their registration on the public housing waiting list	Partially substantiated	1
2009/1121	(a) Failing to update the List of Permitted Trades in Housing Authority Factory Buildings (unsubstantiated); and (b) Giving misleading information on the tenancy period of factory units on the Department's website (substantiated)	Partially substantiated	1
2009/3224	Mishandling a flooding incident in a public housing unit	Substantiated other than alleged	3
2009/3532	Delay and impropriety in handling a seepage complaint	Partially substantiated	2
2009/3695	Delay in refunding public housing rent deposit	Substantiated	2
<b>Immigration Department</b>			
2008/3238	Irregularities in action against a visitor who was going through immigration clearance	Unsubstantiated	1
2008/3778	Buck passing in handling the complainant's application to change his step-daughter's name	Unsubstantiated	0
2008/4492	(a) Failing to curb irregular activities (partially substantiated); and (b) Failing to entertain booking of appointment by telephone and online (partially substantiated)	Partially substantiated	1
2008/5217	Incorrect registration of the complainant's date of birth and impropriety in subsequent actions	Unsubstantiated	0
2009/1677	(a) Issuing two erroneous certified copies of an entry in the Deaths Register; and (b) Refusing to exercise discretion to make a correction on the same day when the complainant submitted an application for correction of error	Substantiated	4

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2009/2113	Forcing a patient to affix his fingerprints on documents regarding his repatriation and recognizance despite that he could not understand the officer's explanation in Cantonese, nor was he mentally fit for such procedures	Partially substantiated	2
<b>Judiciary Administrator</b>			
2008/3779	Buck passing in handling the complainant's application to change his step-daughter's name	Substantiated	0
<b>Labour Department</b>			
2008/4853	Unreasonable refusal to provide the complainant with his previous employer's address	Unsubstantiated	0
<b>Land Registry</b>			
2007/2865	Failing to handle properly a request to correct land registration records	Unsubstantiated	0
<b>Lands Department</b>			
2007/2864	Failing to handle properly a request to correct land registration records	Substantiated	2
2008/1368	Failing to resolve a dispute over the use of a football pitch between a school and the local villagers	Unsubstantiated	0
2008/3841	Irregularities in handling an application for redevelopment of agricultural structures	Partially substantiated	1
2008/4650	Delay in processing an application for rates exemption	Substantiated	1
2008/4797	Shirking responsibility for maintaining a slope to the owners of a building	Partially substantiated	1
2008/5258	(a) Unreasonably demanding the complainant to pay mesne profits (unsubstantiated); and (b) Failing to respond to the complainant's application for a short term tenancy (substantiated)	Partially substantiated	2
2008/5332	Delay in processing an application for rates exemption	Partially substantiated	1
2009/0409	Failing to take enforcement action against illegal land filling activities	Unsubstantiated	0
2009/0711	(a) Failing to explain to the complainant clearly why a pre-clearance survey had to be conducted; and (b) Trespassing on the complainant's garden	Unsubstantiated	2
2009/1037	Failing to properly handle complaints since 2000 regarding flooding at a private estate and the safety problem of a slope nearby, resulting in a landslide in June 2008	Partially substantiated	2

Case No.	Complaint	Overall Conclusion	No. of Recommendations
2009/1230	Failing to follow up a complaint about illegal structures which blocked the escape route in a building	Unsubstantiated	0
2009/1730	Failing to open a public toilet for public use since its completion in 2003	Unsubstantiated	0
2009/2408(I)	Unreasonable refusal of the complainant's request for copies of documents signed by his father on the assignment of a land licence and a building licence	Partially substantiated	1
2009/3913	Failing to take effective measures to resolve the perennial problem of waste disposal on the Government land in front of a refuse collection point	Unsubstantiated	0
<b>Leisure and Cultural Services Department</b>			
2008/4875	Failing to handle properly books returned <i>via</i> book drop and unreasonably demanding compensation for a book returned and found damaged	Unsubstantiated	1
2009/0159	Failing to properly protect Hong Kong's historical heritage	Unsubstantiated	0
<b>Planning Department</b>			
2008/2683	Poor planning of a footbridge	Unsubstantiated	0
2009/0410	Failing to take enforcement action against illegal land filling activities	Unsubstantiated	0
<b>Post Office</b>			
2007/2760	Causing nuisance by sending the complainant unaddressed circular mail and refusing his request to opt out of the service	Substantiated	1
<b>Privacy Commissioner for Personal Data</b>			
2008/2114	Failing to give a fair opportunity to be heard	Substantiated	2
<b>Rating and Valuation Department</b>			
2008/4651	Delay in processing an application for rates exemption	Substantiated	1
2008/5333	Delay in processing an application for rates exemption	Partially substantiated	1
2009/0135	Poor work attitude of staff and failure to actively help the complainant solve his problem	Partially substantiated	0
2009/2574	Failing to allocate a building number to the complainant's house	Unsubstantiated	0
<b>Registration and Electoral Office</b>			
2008/3965	Failing to update its records of an elector, such that letters were sent to an invalid address	Substantiated	0



Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Social Welfare Department</b>			
2008/3895	Unreasonably refusing to place the complainant's brother in a care and attention home for severely disabled persons	Unsubstantiated	0
2008/4520	Failure to inform the complainant that his autistic child could apply for disability allowance	Unsubstantiated	0
2008/5228	Unreasonably refusing to grant disability allowance to the complainant who had a lower leg amputated	Partially substantiated	0
2008/5331	Failure to properly look into a complaint about the complainant's grandmother being abused by a staff of a residential care home for the elderly	Unsubstantiated	0
2008/6002	Rubberstamping the doctors' recommendations when processing the complainant's applications for disability allowance	Substantiated	0
2009/0706	(a) Unreasonably issuing a licence to a residential care home for the elderly with a name very similar to that of the care home operated by the complainant (partially substantiated); and (b) Delay in handling a complaint (partially substantiated)	Partially substantiated	1
2009/1728	(a) Unreasonably refusing to provide the complainant with a clinical psychologist's report on her daughter (substantiated); and (b) Unreasonably refusing to allow recording of the clinical psychologist's verbal explanation on the content of the report to the complainant (unsubstantiated)	Partially substantiated	2
2009/2206	Mistakenly arranging two medical assessments for the complainant's disability allowance application, resulting in her Higher Disability Allowance being changed to Normal Disability Allowance	Substantiated other than alleged	0
2009/2486	(a) Cold attitude of a medical social worker towards the complainant (partially substantiated); and (b) Shirking responsibility when handling the complainant's application for compassionate rehousing (unsubstantiated)	Partially substantiated	0
2009/2971	Arranging for the complainants' relative to withdraw from their family case of Comprehensive Social Security Assistance and apply for the Assistance as a single person without the complainants' consent	Unsubstantiated	0

Case No.	Complaint	Overall Conclusion	No. of Recommendations
<b>Student Financial Assistance Agency</b>			
2008/3235	Mishandling an application under a financial assistance scheme and failure to answer an enquiry by the applicant's father	Partially substantiated	2
2008/6025	Delay in processing an application under a financial assistance scheme	Substantiated	2
<b>Transport Department</b>			
2008/2502	Illegitimately withholding processing of applications for transfer of vehicles	Substantiated	0
2008/2684	Poor planning of a footbridge and failure to respond to the complainant's request to retain a pedestrian crossing	Substantiated	2
2008/3178	Mishandling a complaint about street sleepers at a Government complex	Unsubstantiated	0
2008/4632	Shirking responsibility for dealing with illegal parking of bicycles at a public transport interchange	Substantiated	9
<b>Water Supplies Department</b>			
2008/1634	Impropriety in handling a complaint about overcharging of water charges and failure to provide a satisfactory explanation to the complainant	Unsubstantiated	0
2008/4817	Causing nuisance to the complainant by repeatedly sending to his address the final bill and reminders for the former tenant	Substantiated	5
2008/4832	(a) Wrongly assuming loss of the complainant's water meter and deducting its cost from her deposit without prior notice; (b) Trying to cover up staff negligence with the excuse that the meter had been blocked from sight; and (c) Failing to take prompt remedial action upon receipt of the complaint	Substantiated	6
2009/0031	(a) Delay in notifying the complainant of adjustment in water charge; (b) Failing to indicate in its letter to the complainant the period of zero water consumption; and (c) Failing to give a substantive reply to the complainant's enquiry	Substantiated	4
2009/1827	Unreasonably charging the complainant high water charges	Substantiated other than alleged	0
2009/1859	Unreasonably charging the complainant high water charges	Substantiated	0
2009/2135	Unreasonably issuing a repair notice on water supply facilities	Partially substantiated	3

## Annex 14

# Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

### **Agriculture, Fisheries and Conservation Department (“AFCD”) and Efficiency Unit (“EU”)**

**Case Nos. OMB 2007/6013; OMB 2008/0067 –**

**Lost dog report**

**Main allegations: AFCD – negligence in handling a lost dog report, causing the dog to be wrongly euthanised and delay in replying – partially substantiated**

**EU – failing to properly handle telephone enquiries on a dog reported lost – substantiated**



### **Dog Euthanised amidst Confusing Messages**

The complainant telephoned the 1823 Call Centre under EU to report loss of her Shih Tzu. Two days later, the complainant telephoned the Call Centre again. The operator receiving her call indicated that her call would be transferred to the AFCD staff concerned. This misled her into believing that the second operator manning the AFCD hotline whom she was talking to was an AFCD officer. As the latter advised that there was no need to enquire every day because the Department would contact her when the dog was found, the complainant made no further calls to follow up. Eight days after the report, AFCD called to inform her that the dog had been found and she could claim it back. Nevertheless, 30 minutes later, another call from AFCD informed her that the dog had been euthanised.

2. The complainant was dissatisfied that the Call Centre staff had not handled her enquiry properly. She also alleged that AFCD had mishandled her case, even attempting to cover up the mistake by lying that the dog had contracted serious dermatosis, and delayed in giving her a written reply.

### **Response from EU**

3. EU conceded that the first Call Centre operator had indeed said that she would transfer the complainant's call to “the AFCD hotline staff”: in fact, it meant the Call Centre staff handling the AFCD hotline. The Call Centre apologised for causing the misunderstanding. However, EU maintained that its staff had adequately answered the complainant's enquiry based on the information available in its database and telephone system.

### **AFCD's Explanation**

4. AFCD pointed out that some dogs looked alike and had no distinctive features. Its staff could only rely on information provided by the owners

and the staff's own observation and experience to identify a dog. As the complainant's dog had not been microchipped while the flea collar and dog collar hidden from sight by its fur, AFCD staff could not identify it as the one reported lost.

5. In fact, the dog had been found and sent to an Animal Management Centre ("AMC") under AFCD the very afternoon it was reported lost. Since the dog had been kept at the AMC for more than four days with no one coming to claim it, it was put on the disposal list. However, on the day when the dog was due for euthanasia, the staff member on duty (Staff A), on final checking, found that it was a dog reported lost. She then removed it from the draft disposal list and telephoned the complainant. Staff A stated that when handing the disposal list to her supervisor (Staff B), she had pointed out the deletion that there were animals not to be euthanised. However, though Staff B admitted that before Staff A had completed the final checking, he had taken the draft list and photocopied it for cross-checking of animals for disposal, he insisted that the disposal list he received from Staff A did not include deletion of the dogs in question. Consequently, the dog was euthanised.

6. AFCD considered this a matter of miscommunication between individual staff members and the existing procedures were not flawed. Meanwhile, Staff B denied having told the complainant that the dog had contracted dermatosis, admitting only to having agreed to the complainant's statement about her dog having a history of skin disease. He said he had also explained to the complainant that the dog had been euthanised according to AMC's established procedures.

7. On the alleged delay in reply, the AFCD staff had informed the complainant once the original promised date of reply was found unable to be met. In any case, the reply was eventually sent in a month, within the performance pledge.

## **Our Observations and Comments**

8. This Office considered that in answering enquiries, the Call Centre staff should ensure the information in its database is accurate. However, in this incident, the second operator had no idea that the dog was actually found and sent to one of the AMC the very afternoon it was reported lost and still used the outdated information to answer the complainant's enquiries.

9. This Office further considered that the Call Centre staff's way of expression tended to mislead the complainant into believing that the second operator who took her call on transfer was from AFCD.

10. We did not accept the claim that AFCD staff could not establish the identity of the dog because its collars had been hidden from view by its fur. We considered that the staff concerned had not been careful and observant enough. Moreover, miscommunication between individual staff members was only one of the factors contributing to the dog being wrongly euthanised. The actual cause was deficiencies in AFCD's procedures for handling animals reported lost and caught.

11. The complainant had clarified that she was mainly dissatisfied with AFCD's lack of proper explanation of the incident, rather than delay in giving her a written reply. In the circumstances, the allegation of delay in replying was unsubstantiated.

## Conclusion

12. Against this background, The Ombudsman considered the complaints against EU substantiated and AFCD partially substantiated. However, this Office agreed that had the complainant taken her dog to be licensed and microchipped as required by law, this incident could have been avoided.

## Recommendations

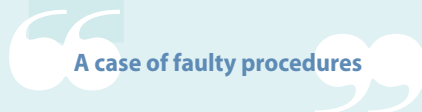
13. The Ombudsman made a number of recommendations to AFCD and EU, including:

### For AFCD

- (a) to clarify the existing duties and work procedures of AMC staff and require them to observe the departmental guidelines;
- (b) to photograph all the animals admitted to an AMC and save copies in its computer for staff reference;
- (c) to publicise among owners the importance of having their dogs microchipped;

### For AFCD and EU

- (d) to review the role of the Call Centre in handling public enquiries on lost animals;
- (e) AFCD to inform the Call Centre of its replies to reports on lost animals as soon as possible so that the latter can update its records; and
- (f) when it is necessary to transfer a call to "the staff manning the AFCD hotline", Call Centre staff to make it clear to the caller that the transferred call is still answered by the Centre, not AFCD.



## Buildings Department ("BD") and Food and Environmental Hygiene Department ("FEHD")

**Case Nos. OMB 2008/1362-1363 – Seepage problem**

**Allegation: shirking responsibility in handling a report on leakage of communal drainage pipes – substantiated other than alleged**

### The Complaint

A property management company complained to FEHD about leakage of the communal drainage pipes located at a car park space in an estate under its management. Upon investigation, FEHD considered the leakage to be

caused by defective external drainage pipes of a unit ("Unit A") above the car park space and so referred it to BD for follow-up action. However, apart from sending advisory letters to the owner concerned and the Incorporated Owners of the relevant buildings, BD took no further action to abate the environmental nuisance.

2. The complainant thus complained to this Office against BD and FEHD for shirking responsibility in handling its report of leakage.

### **Joint Office for Seepage Complaints**

3. The Joint Offices ("JO") have been set up by Government with staff from FEHD and BD to provide a "one-stop service" to handle public complaints of seepage. However, in handling complaints concerning defective drainage pipes, BD is confined to its departmental role and not as a partner in the JO system. Where abnormality of any communal drainage pipes is noted, JO would refer the case to BD Headquarters for necessary action. If the investigation result confirms the existence of defects in the pipes, BD would issue a repair order to the owner concerned.

4. Separately, FEHD is also responsible for investigating complaints connected with drainage pipes problems, albeit for the different purpose of dealing with related environmental hygiene problems.

### **Action by FEHD**

5. After a site inspection, FEHD initially decided to treat the case as one involving defective drainage pipes and so referred the case to BD for action.

6. With BD's professional advice that the source of seepage might be linked to other causes apart from the drainage pipes, FEHD agreed to follow up the case again. However, its action was hampered by a long spell of wet weather, which made accurate readings of moisture content impossible. Moreover, the occupier of Unit A did not fully cooperate. So it took FEHD longer to complete the initial investigation.

### **Action by BD**

7. Despite site inspections at different times, assessment results showed no reliable evidence of the existence of a defective external drainage pipe in the location or any issue relating to structural safety. No action could be taken by BD. Nevertheless, it informed FEHD of its findings and suggested FEHD take up the case again.

8. As the initial investigation by FEHD had since come up with no positive results, BD staff in JO then outsourced the subsequent investigation to a private consultant.

### **Complaint Unsubstantiated**

9. Our investigation showed that both FEHD and BD had followed established procedures in processing the case within their specific purview. Their referral to each other had been in accordance with internal procedures and guidelines.

10. It was unfortunate that the two departments held different views on the analysis and assessment of the condition of the communal drainage pipe. This might have given the complainant an impression that the two departments lacked coordination and attempted to pass the buck. However, as the assessment results involved technical matters and professional judgement, this Office would not comment.

11. To conclude, the complaint against BD and FEHD for shirking responsibility was unsubstantiated. Nevertheless, we noted other administrative deficiencies on their part.

#### **Other Deficiencies: FEHD**

##### ***Confusing Complaints by Different Parties over the Same Matter***

12. FEHD had earlier referred a complaint lodged by the occupant of Unit A to BD, which subsequently replied to the occupant, with a copy to FEHD. However, the complainant of the present case (i.e. the property management company) had also lodged a similar complaint with FEHD. BD was not alerted to this until four months later upon the referral from FEHD, resulting in a late reply by BD to the complainant.

13. Worse still, an FEHD officer, by mistake, once verbally informed the complainant that the problem of the defective waste pipe had already been referred to BD. This was misleading and, technically speaking, incorrect because although the “problem” had been referred to BD, the complainant’s case was not.

##### ***Question of Premature Referral***

14. In connection with possible defects in the main drainage pipe, FEHD had referred the case to BD for action well before the analysis report was received from the Government Laboratory. While we agreed that timely referral was important, it must be done prudently on fact.

#### **Other Deficiencies: BD**

##### ***Delay in Handling of Complaint***

15. There was considerable delay on the part of BD’s consultant in initiating action. There was a lapse of five months from case assignment before site inspection. This was most unsatisfactory.

##### ***The Issue with “Conflict of Interests”***

16. In the course of investigation, this Office discovered that the complainant and BD’s consultant were both subsidiaries of the same business group. We considered that BD should have avoided any situation of potential conflict of interests, whether actual or perceived.

## **Conclusion and Recommendations**

17. This case was, therefore, substantiated other than alleged against BD and FEHD.

18. The Ombudsman made the following recommendations:

##### **For FEHD**

(a) remind staff to exercise greater caution and adhere strictly to the

departmental procedures in handling seepage complaints and to avoid premature referral;

**For BD**

- (b) regularly review and, where necessary, issue specific departmental guidelines and requirements on avoiding conflict of interests and the course of action for an officer in situations of actual or potential conflict of interests; and
- (c) closely monitor the performance of private consultants and ensure effective implementation of the system for monitoring case progress.

19. Both departments accepted our recommendations.

**A case of administrative deficiencies**

## Correctional Services Department (“CSD”)

Case No. OMB 2009/0071 – Well-being of inmates

**Allegation: ignoring an inmate’s complaint about low temperature – substantiated**

### Details of Complaint

When receiving treatment in a psychiatric centre under CSD, the complainant was detained alone in a protected room for several days. He complained about feeling cold, but the staff offered no help.



### Response from CSD

2. The complainant was in a mentally unstable condition. At the doctor’s instruction, the duty officer placed him in the protected room without window. He was clothed in prison uniform and a jacket. As the air-conditioning was set at 26°C, the staff considered that he should be warm enough.

### Our Observations and Comments

3. The outdoor temperature that day was down to 15°C. While the air-conditioning system was set at 26°C, it did not have a heat function. The room temperature was, therefore, close to that outdoors and the complainant likely to be genuinely cold.

4. The Ombudsman, therefore, considered the complaint substantiated.

5. CSD agreed to upgrade the air-conditioning systems of all protected rooms to maintain a suitable temperature.

**A case of inadequate care for inmates**



## Food and Environmental Hygiene Department (“FEHD”) and Home Affairs Department (“HAD”)

Case Nos. OMB 2007/5219, 2007/5804 – Club licence and restaurant licence

Main allegations: FEHD – failing to discover that a restaurant in the clubhouse of a private estate had been operating unlicensed for years and not replying to enquiries – substantiated

HAD – failing to ascertain whether the clubhouse continued to operate without a Certificate of Compliance – unsubstantiated



### Details of Complaint

A restaurant in the clubhouse of a private estate had been operating for years. The Owners' Corporation (“OC”) of the estate later learned that it had not been licensed and, despite periodic inspections by FEHD over the years, this was never discovered. OC wrote thrice to the Department to enquire but did not get any reply.

2. Meanwhile, the management agent of the estate had applied to HAD for a Certificate of Compliance (“CoC”) for the clubhouse but later withdrew the application. HAD allegedly had failed to ascertain whether the management agent continued to operate the clubhouse without a licence.

### Club, Clubhouse, Restaurant and Relevant Laws

3. According to the Clubs (Safety of Premises) Ordinance (“Clubs Ordinance”), a “club” operates on a membership system. Moreover, the Food Business Regulation (“FB Regulation”) stipulates that food businesses such as restaurants be issued a licence by FEHD to operate. Clubs, however, are not included under the interpretation of “food business” in the Regulation.

4. Residents clubs of private estates not operating on a membership system (i.e. where the owners/residents are automatically entitled to use the clubhouse facilities) are not “clubs”. They are, therefore, outside the ambit of the Clubs Ordinance. Such residents clubs need not apply to HAD for a CoC. If their catering service is for owners/residents of the estate and their accompanied guests only, such service is also exempted from a restaurant licence.

### Response from HAD

5. HAD had received four applications for a CoC in 1996, 1997, again in July and August 2007 from the management agent, the estate manager and the OC respectively. Exemption was granted in 1996 as the clubhouse was not operating on a membership system. The other three applications were either rejected by HAD or withdrawn by the applicant. Subsequent site inspections following withdrawal of applications found no evidence of the residents club operating a membership system. It, therefore, fell outside the ambit of the Clubs Ordinance. Further action was deemed not warranted and the case was closed.

6. In July 2002, HAD received an FEHD notification that the residents club was operating without a licence. HAD replied that an exemption had been granted in 1996, but mentioned nothing about the second application submitted by the management agent in 1997.

### **Response from FEHD**

7. From July 2002 to June 2007, FEHD staff conducted more than 40 inspections at the residents club, but did not find any unlicensed restaurant there. However, as there were a kitchen and some seating facilities, the person-in-charge was verbally warned against operating any restaurant without a licence.

8. In September 2007, an OC member Mr A sent an email to FEHD asking why the restaurant could have gone unnoticed for so many years and asked for the inspection records. FEHD, in its email reply, maintained that no unlicensed restaurant had ever been found in the clubhouse during its many inspections at different hours since 2002. Not receiving any reply, Mr A sent out two reminders, which FEHD failed to file for action. It was not until February 2008 that the Department replied to Mr A again by email.

### **Our Observations and Comments**

9. HAD conducted a site inspection at the clubhouse on both occasions when the application for a CoC was withdrawn. It considered no action to be necessary as it had been ascertained that the clubhouse did not have a membership system and was, therefore, not bound by the Clubs Ordinance.

10. The Ombudsman considered the complaint against HAD unsubstantiated.

11. FEHD had noticed signs (such as a kitchen and some seating facilities) of possible existence of an unlicensed restaurant in the clubhouse as early as 2002 but chose to turn a blind eye. Their 40 inspections were not conducted at weekends or during busy hours on weekdays. The inspection results were also not properly recorded.

12. Mr A had asked several times for inspection records, but FEHD re-sent the reply only upon intervention by this Office. The explanation with apology had to wait for another 18 months.

13. The Ombudsman considered the complaint against FEHD substantiated.

### **Other Points of Maladministration**

14. HAD did not file all the documents and records relating to the residents club together for retrieval of full information where necessary. This affected FEHD's follow-up action as a result.

15. We also noticed that FEHD initially did not have a clear idea whether the catering service of a club without a CoC could be exempted from licensing as a restaurant. However, it had twice warned the OC that the residents club should not operate an unlicensed restaurant, only to clarify eventually that a licence was not required. In other words, years of FEHD inspections to ascertain

whether there was an unlicensed restaurant were but a waste of efforts and a nuisance to the operator. FEHD had been enforcing a law it did not really understand.

16. The legal advice obtained by FEHD was that clubs that offer catering services but do not operate on a membership system (such as the clubhouse in question) are not “clubs” as defined in the Clubs Ordinance and, therefore, need not apply for a CoC. On the other hand, as these clubs operate in the same manner as those with a membership system, a restaurant licence from FEHD is not required for their catering service. It means that these clubhouses can evade regulation by both HAD and FEHD. Such total absence of law enforcement is a potential risk to food safety.

## Recommendations

17. The Ombudsman made the following recommendations to FEHD:

- (a) to seek legal advice on the interpretations of “club” under the Clubs Ordinance and FB Regulation to clarify scope and powers of enforcement;
- (b) to formulate clear guidelines for staff concerning enforcement against “clubs” and residents clubs;
- (c) on receiving a report of a “club” operating a food business without a licence, to check first with HAD whether the “club” has been issued with a CoC or is exempted from the requirement;
- (d) to confer with HAD how to plug the loophole, mentioned in para. 16, by which some restaurant operators may avoid Government regulation; and
- (e) to keep proper records of all inspections at restaurants suspected to be unlicensed and to respond promptly to public enquiries and complaints.

**A case of ineffective enforcement action**

## Home Affairs Department (“HAD”), Planning Department (“Plan D”) and Transport Department (“TD”)

Case Nos. OMB 2008/1516, OMB 2008/2683-2684 –  
Planning of footbridge

Main allegations: HAD – failure to conduct proper public consultation on a footbridge project and to reply to the complaint – partially substantiated

Plan D – poor planning of the footbridge, thus failing to benefit two buildings nearby – unsubstantiated

TD – poor planning of the footbridge, thus failing to benefit the two buildings nearby, and also failure to respond to the complainants’ request to retain a pedestrian crossing – substantiated



## Details of Complaint

The complainants were the owner of a commercial building ("Building A") and the owners' corporation of an industrial building ("Building B"). They learned that a footbridge would be built by the developer of a new Building C. The footbridge would cross over Street D nearby, but without any landing points near Buildings A and B. The complainants, therefore, complained to the local District Office ("DO") under HAD. However, they never got a reply.

2. The complainants were dissatisfied with the planning of the footbridge by Plan D and TD. The latter had also ignored their request to retain the pedestrian crossing on Street D. They also alleged that DO had failed to conduct proper public consultation on the footbridge and had not replied to their complaint.

## Background

3. Planning approval for Building C and the footbridge had been granted some years ago by the Town Planning Board ("TPB"). The land lease thus drawn up stipulated that the design of the footbridge (including its landing points and connections to nearby streets and buildings) was subject to the Director of Lands' approval. Accordingly, the Lands Department consulted relevant departments, including TD and DO. TD raised no objection against the proposed alignment of the footbridge, nor had DO received any adverse comments from locals.

## Departments' Response

4. **HAD** explained that DO had merely collected the views of some District Councillors and local personalities on the footbridge proposal because the development was private and the departments concerned had not requested public consultation.

5. After receiving the complainants' letter, DO immediately referred it to TD for reply direct to the complainants. However, DO did not inform the complainants of its referral.

6. **Plan D** had, prior to TPB's planning approval, consulted other departments concerned on the development of Building C and the footbridge. No objection was received from TD or DO.

7. **TD** had accepted the developer's proposal to construct the footbridge at its own cost to cater for the additional pedestrian flow to and from Building C. The Department was in favour of more landing points, subject to the availability of space. It had subsequently suggested that the developer incorporate into the design of footbridge sufficient space and loading capacity for future connection by the complainants to Buildings A and B.

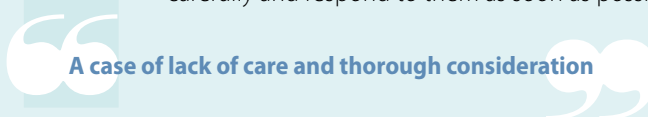
8. TD clarified that it had no plan to remove the pedestrian crossing on Street D. It had telephoned the complainants on their complaint, but out of misunderstanding had not replied to their letter.

## Our Comments

9. While public consultation was not a statutory requirement in those days, DO should have been mindful of the need to maximise the benefits of the proposed footbridge to the neighbourhood. It should thus have conducted public consultation to duly engage the public in the scrutiny of the project.
10. As regards the complainants' letter, it would have been better if DO had notified them of its referral to TD, so that they would know whom to contact.
11. The complaint against **HAD** was, therefore, partially substantiated.
12. Plan D had consulted other departments concerned when processing the planning application for the footbridge. The complaint against **Plan D** was, therefore, unsubstantiated.
13. TD had all along focused on the extra pedestrian flow that Building C would bring about, without considering how to fully utilise the footbridge to improve overall pedestrian movement in the neighbourhood. Nor had it examined carefully enough the need for more landing points or connections to buildings nearby and made appropriate recommendations. It had also failed to read the complainants' letter carefully and reply to it. The complaint against **TD** was, therefore, substantiated.

## Recommendations

14. The Ombudsman recommended that:
  - (a) HAD remind staff to conduct comprehensive consultation where warranted and to inform the complainant when referring a complaint to another department; and
  - (b) TD instruct staff to consider development proposals from different perspectives to maximise benefits to the public, handle complaints carefully and respond to them as soon as possible.



## Hong Kong Examinations and Assessment Authority ("HKEAA")

**Case No. OMB 2008/4096 – Appeal on examination results**

**Allegations: unreasonably refusing the complainant's requests to – (a) see her daughter's re-marked examination scripts; and (b) inform her of the cut scores for certain subjects – partially substantiated**

### Details of Complaint

The complainant's daughter ("Miss A") sat for the 2008 Hong Kong Certificate of Education Examination. She appealed on her results for three subjects. HKEAA replied that after rechecking and re-marking, the results stood. The complainant then asked to see Miss A's re-marked examination scripts.

2. HKEAA gave qualitative feedback on Miss A's performance in those three subjects and showed Miss A's unmarked examination scripts, but not the re-marked scripts.

3. The complainant subsequently wrote to HKEAA, requesting again to see the re-marked scripts and asking for the cut scores\* for the three subjects. However, the Authority refused.

## Our Findings

### Allegation (a)

4. HKEAA conceded that it is obliged under the Personal Data (Privacy) Ordinance ("PDPO") to provide marked scripts in response to valid data access requests. In this case, the re-marked scripts, with markers' markings, should be deemed to contain Miss A's personal data. HKEAA was, therefore, obliged to provide a copy of the re-marked scripts to Miss A upon receipt of a data access request made under PDPO.

5. Technically speaking, Miss A had not made such a formal data access request. Hence, HKEAA had not contravened PDPO in refusing the complainant's requests for the re-marked scripts. However, in essence, the complainant's requests constituted a request made on behalf of Miss A for the latter's personal data. Furthermore, her repeated requests clearly indicated their determination to secure those pieces of information. HKEAA should have acceded to the request, or at least advised the complainant to submit a formal data access request using the prescribed form under PDPO. Regrettably, HKEAA had done neither.

6. We considered HKEAA's attitude passive and unhelpful. In this light, allegation (a) was substantiated.

### Allegation (b)

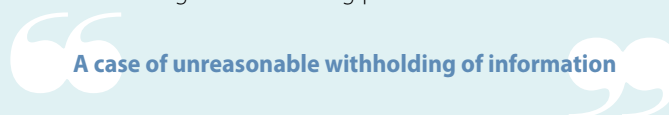
7. In view of the complicated and variable nature of cut scores, we agreed with HKEAA that releasing the cut scores would only cause confusion and generate unnecessary argument. Allegation (b) was, therefore, unsubstantiated.

## Conclusion and Recommendation

8. In sum, The Ombudsman considered the case partially substantiated.

9. The Ombudsman recommended that HKEAA entertain candidates' requests for marked examination scripts, whether such requests are made in the form of a data access request or not.

10. HKEAA agreed, with effect from the 2009 examinations, to provide candidates, upon request, with their marked examination scripts after the rechecking and re-marking process.



\* A cut score defines the minimum score for a grade in a subject.

## Hong Kong Examinations and Assessment Authority (“HKEAA”)

Case No. OMB 2008/4830 – Examination arrangements

**Main allegations: (a) unreasonably rejecting a candidate’s application for using computer in an examination; and (b) asking the candidate to pay an exceedingly high fee when it later agreed to provide a computer for the purpose – substantiated**



### Details of Complaint

The complainant had registered for a translation examination administered by HKEAA on behalf of a certain linguistics institution. On learning from the institution’s Handbook for Candidates that use of computer in the examination was permitted, he called HKEAA to make an application. However, his application was rejected outright by HKEAA staff on the grounds that “there was no such practice”. He demanded further explanation from HKEAA and indicated that he would file a complaint.

2. HKEAA later replied that it could provide the complainant with a computer but he would have to pay an exorbitant fee. He considered HKEAA to have handled his application unfairly.

### HKEAA’s Response

3. According to HKEAA, that was the first time a candidate had applied for use of computer in the examination. The staff member concerned only knew that candidates had always had to prepare their scripts by handwriting and so he rejected the complainant’s application without hesitation. HKEAA apologised for that.

4. HKEAA could entertain the complainant’s application, but that would necessitate fitting-out an existing computer, providing a reserve computer and deploying a technician to the examination venue.

5. HKEAA had already waived some of its costs when proposing the fee to the complainant.

### Our Comments

6. HKEAA should have expected and prepared itself to receive applications for use of computer in the examination, since it was an option clearly stated in the Handbook for Candidates issued by the linguistics institution. This case showed that HKEAA had adhered to its own established practice with little flexibility.

7. Had HKEAA prepared for giving all candidates the option to use computer and prorated the costs among the likely users, it would have saved itself the embarrassment of “first rejecting but later allowing” the complainant’s application. Furthermore, it would have managed to make the necessary arrangements more easily and charge a more reasonable rate for using the computer vis-à-vis the examination fee itself.



## Conclusion and Recommendation

8. The Ombudsman considered HKEAA to have failed to handle the complainant's request properly. The complaint was, therefore, substantiated.

9. In view of the prevailing trend for computer applications, The Ombudsman urged HKEAA to explore how best to allow candidates of all examinations the option of using the computer.

**A case of lack of proactiveness and flexibility**

## Hospital Authority ("HA") and Social Welfare Department ("SWD")

**Case Nos. OMB 2008/6002-6003 – Disability allowance**

**Main allegations: HA – unreasonably subjecting the complainant to review every three years despite an earlier assessment of permanent disability – substantiated  
SWD – rubberstamping the doctors' recommendations when processing the complainant's applications for disability allowance – substantiated**



## Details of Complaint

Since 2006, the complainant had been receiving Normal Disability Allowance ("NDA") from SWD. On a HA doctor's assessment of "permanent loss of sight", SWD had granted him NDA on a permanent basis with no requirement for review.

2. In 2008, he applied to SWD for Higher Disability Allowance ("HDA")<sup>^</sup> and was required to undergo a medical re-assessment. Based on the re-assessment, SWD rejected his application. He continued to be granted NDA, but subject to medical review every three years. He found the change unreasonable.

## Response from HA

3. The two doctors assessing the complainant's applications for NDA and HDA respectively held different views on his chance of recovery. The first doctor found one of his eyes to have little residual vision and the other to be blind. Permanent NDA was, therefore, recommended. However, less than two years later, the second doctor considered him not totally blind, with possibility of recovery due to technological advances. He was then eligible only for NDA subject to periodic review.

4. Subsequently, the complainant applied for HDA again. The doctor found that his condition had worsened and his mental health affected by the aforementioned change. Reinstatement of permanent NDA was, therefore, recommended.

<sup>^</sup> HDA is granted to people "severely disabled" and in need of constant attendance from others in their daily life.



## Response from SWD

5. SWD explained that it always relied on medical assessments as staff lacked the professional knowledge to query doctors. If they had to ask the doctors on every case of inconsistency between medical assessment reports, that would result in heavy workload for them and the doctors with delays in granting allowances.

## Our Observations and Comments

6. While technological advances may render certain diseases curable, HA had never issued any guidelines on the types of “severe disability” expected to be curable some day. Consequently, different doctors could apply this concept arbitrarily, leading to inconsistency between medical assessments. Nor could HA explain why technological advances should not apply when the doctor assessed the applicant’s second application for HDA.

7. The Ombudsman, therefore, considered the complaint against HA substantiated.

8. SWD had failed in its duty as the administrator and approving authority of the Disability Allowance Scheme. It blindly followed doctors’ recommendations on the pretext of lack of professional knowledge and concern for efficient operation. The complaint against SWD was, therefore, also substantiated.

## Recommendation

9. The Ombudsman recommended that HA and SWD conscientiously review the deficiencies in their processing of applications for disability allowance, particularly their lax and irresponsible attitude.

**A case of inconsistency in processing applications and irresponsible attitude**

## Housing Department (“HD”)

**Case No. OMB 2008/1009 – Processing of claim**

**Allegation: refusing, without good reasons, to compensate a tenant for damage to his property from a flush water pipe bursting – substantiated**

## Details of Complaint

The complainant was a public housing tenant. A communal flush water pipe inside his flat suddenly burst, resulting in flooding and damage to his property. He sought compensation from HD, the executive arm of the Hong Kong Housing Authority (“HKHA”), but in vain.

## Grounds for Refusal

2. The loss adjuster of HKHA’s insurer recommended against compensation for the following reasons:

- (a) Under the tenancy agreement, the landlord (i.e. HKHA) is not liable for any damage to the property of the tenant due to overflow of water or drainage; and
  - (b) The bursting of the flush water pipe was believed to be due to natural wear and tear, thus purely accidental and not involving negligence. HD had not received any request for repairs and similar incident had not occurred before.
3. Accordingly, HD rejected the complainant's claim.

### HD Explanation

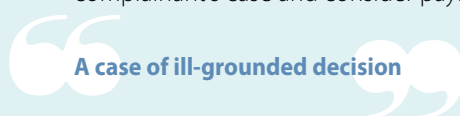
4. HD contended that the pipe was of international standard. The Department had regularly inspected the buildings and external communal facilities. The communal flush water system of the complainant's building had earlier been found to be in order. The Department had also urged tenants to check the fixtures and fittings inside their flats regularly. The onus of reporting any need for repairs was on the tenants.

### Our Observations and Comments

5. It was wrong of the loss adjuster and HD to cite the tenancy agreement as this was a case of a water pipe bursting, not of "overflow".
6. HD claimed that the pipe was of international standard, fit to serve out 50 years but had been in use for only 14 years. However, this did not preclude the possibility that the pipe might have had some other problems. Furthermore, this questioned the loss adjuster's belief that the bursting of the pipe was due to "natural wear and tear".
7. While HD had regularly inspected the external communal facilities and found the overall flush water system in order, this did not necessarily show that the Department had duly maintained the pipe in question, which was located within the complainant's flat. Nor could the complainant be expected to inspect the pipe regularly or to report any need for repairs, as HD had hidden it from view with a fixed board.
8. In sum, HD had not fully examined its own responsibility before deciding to reject the complainant's claim for compensation.

### Conclusion and Recommendations

9. This complaint was, therefore, substantiated.
10. The Ombudsman urged HD to review its responsibility in the complainant's case and consider payment to make up for his loss.



## Housing Department (“HD”)

**Case No. OMB 2009/0914 – Deletion from tenancy**

**Main allegation: unreasonably querying, and delaying the processing of, an application for deleting the complainant and his wife from public housing tenancy – partially substantiated**

### Details of Complaint

The complainant originally lived with his parents, wife and two teenage children in two adjoining public housing units. In 2008, the complainant’s father, the registered tenant, surrendered one of the units to HD and applied for deletion of the complainant and his wife from the tenancy.

2. When processing the application, HD considered that children under 18 should live with their parents and so queried whether the two children should be left with their grandparents in the unit. The complainant questioned the legal basis for HD’s stance and was dissatisfied with the Department’s delay with the application.

### Response from HD

3. HD considered that it should always have regard to children’s welfare and prevent possible abuse of public housing.

4. On the alleged delay, as the complainant refused to provide proof of his new address, HD had to conduct unannounced visits to his father’s unit to ascertain whether the complainant and his wife had actually moved out. Furthermore, since the application involved the well-being of his teenage children, HD had taken time to consult social workers and seek legal advice. Having cleared doubts, HD eventually approved the application.

### Our Comments

5. Despite its good intentions, HD had no legal basis to take into account the welfare of the children in processing the complainant’s application. The law does not require children to live with parents. Nor do HD staff have the expertise or responsibility to assess the welfare of minors.

6. To prevent possible abuse of public housing, it was necessary for HD to verify that the complainant and his wife had moved out. HD’s delay in processing the application was largely due to the complainant’s refusal to provide proof of his new address.

7. In sum, The Ombudsman considered the complaint partially substantiated.

### Recommendation

8. In this light, The Ombudsman urged HD to review and duly revise its procedures and practices for processing applications for deletion of family members from tenancy.

**A case of lack of legal basis and misunderstanding of role**

## Housing Department (“HD”)

### Case No. OMB 2009/1104 – Public housing application

**Allegation: unreasonably rejecting the complainants’ public housing application, thereby delaying their registration on the public housing waiting list – partially substantiated**



### Details of Complaint

The complainants, a married couple, applied for public housing. They submitted an application to HD, together with their bankruptcy petitions, indicating that they owned Company A but were unable to settle the debts. However, HD returned their application and asked for a copy of the business registration certificate of Company A and a statement of its average monthly profit or income over the previous six months.

2. Subsequently, HD rejected their application on the grounds that they did not provide a copy of the business registration certificate. Consequently, they had to apply afresh, which meant a delay in their registration on the public housing waiting list.

### HD Response

3. HD explained that since the complainants had submitted only their bankruptcy petitions without a bankruptcy order from the Court, it required other documentary evidence of their assets and the status of their business.

4. The complainants told HD that as Company A had ceased operation, they did not have any business registration certificate. Nor could they provide other documentary evidence. On HD’s further request for proof, the complainants each made a separate statement confirming that Company A had ceased operation years ago and had no asset. HD accepted their statements and registered them on the waiting list.

### Our Comments

5. As public housing is a valuable public resource, HD must be prudent in processing applications and checking the eligibility of applicants. It was proper of HD staff to require applicants to provide further documentary evidence in case of doubt.

6. Nevertheless, the complainants had indeed provided HD with all available information. It was unreasonable of HD to require them to apply afresh. As a result, they suffered a delay in their registration on the public housing waiting list.

7. On balance, The Ombudsman considered this complaint partially substantiated.

## Recommendation

8. The Ombudsman urged HD to advance the date of the complainants' registration on the waiting list to the date when it could have completed processing the complainants' application.

### A case of wrong judgement

## Housing Department ("HD")

**Case No. OMB 2009/3695 – Public housing rent deposit**

**Allegation: delay in refunding public housing rent deposit – substantiated**

### Details of Complaint

The complainant, previously a public housing tenant, had purchased a flat in the Home Ownership Scheme ("HOS") Secondary Market. In this connection, she surrendered her unit to HD and requested refund of rent overpaid and rent deposit. However, HD took eight months to do so. She considered this a delay by HD.

### Staff Unfamiliar with Computer System

2. Upon receipt of the complainant's request in February 2009, the Property Management Agent ("PMA") of the estate referred it to the District Tenancy Management Office ("DTMO") for action. The HD staff responsible created a Payment Instruction in the Estate Management and Maintenance System and issued a Refund Certificate for submission to the Finance Section for arrangement of refund.
3. The matter was later returned to DTMO because the Finance Section found that the rent deposit receipt number in the System did not match that on the receipt itself. DTMO then advised PMA to correct the number on the receipt but the latter had no such authority.
4. Subsequently, DTMO staff tried to make the correction and create a new Payment Instruction but in vain. In March, he consulted the Finance Section and was advised to seek help from the Help Desk managed by HD's contractor. The Help Desk staff replied that it was beyond their scope of service and referred his enquiry to the support unit for this computer system. With the latter's advice, DTMO staff completed the necessary procedures and succeeded in correcting the number on the receipt that month.
5. As the DTMO staff concerned was new to the post and was not familiar with the computer operations, his attempt to create a new Payment Instruction was unsuccessful. However, he did not further consult his supervisor or colleagues, resulting in the refund being delayed.

## HD's Explanation

6. HD noted that in addition to the work left by his predecessor, the staff concerned had to deal with a considerable volume of work and so gave this case lower priority. In September, he completed all the necessary procedures with the assistance of a colleague. HD then issued a letter to the complainant refunding the rent deposit in October. Meanwhile, HD also offered explanation and apology to the complainant's family.

7. When handling requests for refund of rent deposit by tenants who terminated tenancy after purchasing HOS flats, HD would follow the relevant instructions under the Tenants Purchase Scheme ("TPS"), i.e. to refund within one month. To ensure timely refund, there was internal monitoring requiring staff concerned to monitor outstanding cases.

8. HD stressed that it had always attached great importance to staff training. When the staff concerned took up the post, training on estate management had been arranged for him. However, he missed the training course on computer system operations for handling refund requests. Consequently, he had to wait for the next round for this training. HD subsequently arranged him to undergo the relevant training.

9. HD held that this was just an isolated case, but agreed to review its internal monitoring mechanism.

## Our Conclusion and Recommendations

10. This Office could not accept HD's argument that this was an isolated case. HD had received the complainant's request in February but did not effect the refund until October. This was a serious delay. In fact, HD had no performance pledge for refund of rent deposits to tenants who purchased HOS units. HD had simply adopted the practice under TPS when handling such requests. The internal monitoring mechanism was also not effective.

11. The Ombudsman, therefore, considered this complaint substantiated.

12. The Ombudsman recommended that HD formulate procedures and performance pledge for handling such refund requests. Moreover, HD should work out a checklist of the training necessary for frontline staff and the timeframe for completing such training.



## Immigration Department ("Imm D")

**Case No. OMB 2008/4492 – Birth registration**

**Allegations: failing: (a) to curb irregular activities; and (b) to entertain booking of appointment by telephone and online – partially substantiated**

## Details of Complaint

Early one morning, the complainant went to one of the births registries under Imm D to queue for his newborn's birth registration. Each person in the queue was given a serial number. However, with touting of the number tags and jumping of queue, the complainant had to wait until noon for registration.

2. He was dissatisfied that Imm D had failed to curb such irregular activities and did not entertain booking of appointment by telephone and online.

## Our Findings

### *Allegation (a)*

3. There was indeed heavy public demand for birth registration at the registry. In response to complaints about touting and jumping of queue, Imm D decided to introduce the following measures:

(a) Staff would distribute number tags to parents only and write down their particulars. During registration, staff would check these against the information furnished by the hospitals where the babies were born;

(b) Any suspected touting activities would be reported to the Police; and

(c) Imm D would seek to install closed circuit television cameras at the main entrance of the registry to deter irregular activities.

### *Allegation (b)*

4. Imm D had, in fact, planned to accept bookings by telephone or online for birth registration.

## Conclusion

5. In sum, The Ombudsman considered the complaint partially substantiated.

## Main Recommendation

6. While the measures mentioned above would help, The Ombudsman urged Imm D to continue to watch out for irregularities.

**A case of inadequate monitoring and control**

## Lands Department ("Lands D") and Land Registry ("LR")

**Case Nos. OMB 2007/2864-2865 – Land registration records**

**Allegation: failing to handle properly a request to correct land registration records**

**Lands D – substantiated**

**LR – unsubstantiated**

## Details of Complaint

The complainant had purchased a lot in the New Territories in 1963 and never assigned it to anyone. However in 1975, staff of the Counter Conveyancing

Service of a District Office under the then New Territories Administration (“NTA”), now restructured as Lands D, wrongly included the lot in an Assignment as Gift (“the Assignment”) and its Memorial. This lot was then recorded in the Land Register as being owned by four other persons.

2. In 2000, discovering the land title for the lot to have been altered, the complainant enquired of a District Lands Office (“DLO”) under Lands D. However, he was advised to seek legal advice.

3. In 2004, through his lawyer, the complainant requested DLO to take action and asked LR to correct the records. It was not until 2007 that DLO indicated it could not do so and the complainant should take legal action himself. Meanwhile, LR advised that the Land Registration Ordinance does not empower it to delete or amend land registration records.

4. The complainant was dissatisfied with Lands D and LR failing to help him.

### **Lands D’s Response**

5. Lands D indicated that it would try to rectify the error if the complainant could prove that the lot had been wrongly included in the Assignment. Meanwhile, if the complainant could contact the parties to the said Assignment and ask them to confirm in writing that they had no legal title to the lot, he might instruct his lawyer to register such confirmation with LR.

### **LR’s Response**

6. LR is mainly responsible for maintaining a Land Register and is indeed not empowered to delete or amend land registration records.

7. Upon our intervention, LR reviewed the case. Although the complainant could himself apply for a court order to change the records, the procedures were cumbersome. LR considered that as the error had been made by NTA, Government as a whole should be responsible for rectifying it.

8. In this light, LR took an unprecedented step and registered a statutory declaration by its own staff as an annotation to the error in the Memorial. In effect, the Land Register was amended to reinstate the complainant as the owner of the lot.

### **Our Comments**

#### ***For Lands D***

9. It had taken DLO some three years to respond to the request from the complainant’s lawyer. This was an inordinate delay.

10. Moreover, the lot in fact belonged to the complainant but the land title had been altered without his knowledge. We found it unreasonable of DLO to ask him to take legal action himself to have the records rectified. The Administration should be responsible for rectifying the error made by NTA staff. Lands D ought to have acted promptly and positively to assist the complainant in finding a solution with LR.



11. The Ombudsman, therefore, considered the complaint against Lands D substantiated.

### **For LR**

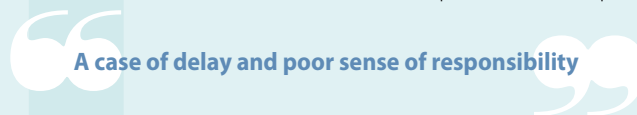
12. Although LR has neither the authority nor the responsibility to rectify an error in registration, it took the initiative and an unprecedented approach to help the complainant. While that was not a total solution, LR had taken the extra step to give him relief. Above all, LR recognised that Government is one entity.

13. The Ombudsman, therefore, considered the complaint against LR unsubstantiated.

## **Recommendations**

14. The Ombudsman recommended that Lands D:

- (a) promptly confer with LR on future cooperation for speedy handling of similar cases; and
- (b) instruct staff to handle requests from the public positively and actively.



## **Leisure and Cultural Services Department ("LCSD")**

**Case No. OMB 2008/4875 – Library service**

**Allegation: failing to handle properly books returned via book drop and unreasonably demanding compensation for a book returned and found damaged – unsubstantiated**

### **Book Returned and Found Damaged**



The complainant went to a public library under LCSD one evening to return some books and magazines. As the library was then closed, he returned the items, which were in good condition, through the book drop outside the library.

2. Later, he went to another public library to borrow some books. However, the staff advised that he had not returned one magazine. The complainant learned that since the magazine was damaged, the library had classified it as "not yet returned". Meanwhile, as he was unable to provide evidence that the magazine was complete and undamaged when it was returned, he had to compensate LCSD for that. Although the complainant eventually agreed to pay for the full cost of the magazine, he considered the way LCSD handled his case as improper. He, therefore, lodged a complaint with this Office.

### **Appropriate Action by LCSD**

3. Under the Libraries Regulations, a charge will be made for any library material lost or damaged and it will be of such sum as the Librarian considers to be full compensation for the loss or damage, plus a 20% surcharge.
4. When the library staff found the cover of the magazine missing, he reported immediately to the duty officer and tried his best to look for it. Meanwhile, the duty officer also quickly instructed a colleague to assist in the search to ascertain whether the missing cover had been left in the book drop or mixed with the other library materials. However, since the barcode and call number of the magazine were affixed to the missing cover, the staff could not identify the borrower. So he could not telephone the complainant immediately to discuss the damage to the library material and to find out the cause. Subsequently, the complainant's identity as the original borrower of the material was established when he borrowed other items. At the complainant's request, the staff conducted a further search for the missing cover but still to no avail.
5. This Office considered that LCSD staff upon receipt of the complaint, had carefully examined and analysed the situation before and after the magazine was returned. It had also explained in detail to the complainant the reason for seeking compensation. There was no evidence that LCSD had unreasonably demanded compensation for the damaged magazine. In fact, when the cover of the magazine was found missing, the complainant had once indicated willingness to pay compensation. However, he later alleged that the staff had intentionally tricked him and so changed his mind and refused to do so.

### **Conclusion**

6. The Ombudsman considered LCSD to have followed its established policy and guidelines in handling this case. There was no impropriety and the complaint was unsubstantiated.

### **Notice on Drop Box Recommended**

7. This Office noted that book drops were to facilitate borrowers returning materials outside library opening hours. Nevertheless, when library materials were found damaged, the borrowers were often unable to provide concrete evidence that the library materials returned via book drops had been intact and undamaged.
8. In this connection, this Office recommended that LCSD consider posting the Summary of the Libraries Regulations at the book drops to advise borrowers of the rules to be observed and the possible liability to pay compensation in case of loss or damage of library materials.
9. The Ombudsman was pleased with LCSD's acceptance of the recommendation.

## Office of the Privacy Commissioner for Personal Data (“PCPD”)

### Case No. OMB 2008/2114 – Investigation proceedings

#### Allegation: failing to give a fair opportunity to be heard – substantiated

### Details of Complaint

On behalf of his employer, Mr X had responded to initial questions from PCPD during the latter’s investigation into a case of contravention of the Personal Data (Privacy) Ordinance (“the Ordinance”) in which the employer was suspected to have improperly transferred the personal data of its customers to a third party.

2. Mr X lodged a complaint with this Office, alleging that PCPD had, without giving him a fair opportunity to defend or clarify, stated categorically in the Result of Investigation (“the Result”) sent directly to his employer that Mr X had misled the Privacy Commissioner for Personal Data (“the Commissioner”).

### Background

3. PCPD’s investigation discovered that the personal data which the employer had disclosed to the third party were in fact more substantial than what Mr X had affirmed. The employer explained that the discrepancy was mainly due to internal miscommunication and there had been no intention to mislead PCPD. Nevertheless, in the Result, PCPD indicated that it would issue a warning to Mr X for his misleading representation.

4. Subsequent to Mr X’s complaint to us, PCPD accepted that Mr X had indeed no intention to mislead the Commissioner. PCPD, therefore, withdrew from the Result the statement about the warning.

### PCPD’s Response

5. PCPD maintained that the information it had received from Mr X was inaccurate or untrue. Hence, the statement in the Result that the Commissioner had been misled was a matter of fact rather than a criticism. Accordingly, the question whether PCPD should have offered Mr X an opportunity to be heard should not arise.

6. Besides, PCPD had no legal obligation to give Mr X an opportunity to be heard as such an opportunity shall be given only when a “report” is to be published under the Ordinance. In Mr X’s case, only the Result had been issued to the employer. No “report” was involved.

### Our Comments

7. The crux of the matter was whether the Result contained any comments that had criticised or adversely affected Mr X to warrant his being given a fair hearing. We do not question PCPD’s prerogative to comment on the truthfulness or accuracy of the information it receives from respondents. Nevertheless, the comments in the Result in this case were clear expressions of disapproval of Mr X.

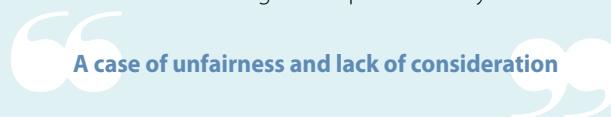
8. As a public organisation, PCPD has a responsibility to be fair and open to citizens, not just under certain conditions, but at all times. Although strictly speaking, it had no legal obligation to give Mr X an opportunity to be heard, it was still unfair to have issued the Result to his employer without giving him an opportunity to explain or clarify the comments relating to him personally. Moreover, PCPD's assumption that the employer had given Mr X a chance to explain or clarify reflected its lack of consideration for someone affected by its action or decision.

9. In this light, The Ombudsman considered the complaint substantiated.

## Recommendations

10. PCPD accepted The Ombudsman's recommendations:

- (a) to give Mr X a fresh opportunity to state his case on its comments on him; and
- (b) to introduce internal guidelines to ensure that a fair opportunity to be heard is given to persons likely to be criticised or adversely affected.



## Post Office ("PO")

**Case No. OMB 2007/2760 – Circular Service**

**Main allegations: causing nuisance by sending the complainant unaddressed circular mail and refusing his request to opt out of the service – substantiated**

### Details of Complaint

The Hong Kong Post Circular Service allows bulk sending of unaddressed mail to a large number of people at discounted postage.



2. The complainant was annoyed by frequent delivery of such unwanted mail. He did not want to receive such mail but found the "Mandatory Opt Out Scheme" of PO ineffective. He proposed a "sticker scheme" instead, whereby households could label their mailboxes to indicate their wish not to receive circular mail.

### PO's Response

3. PO considered itself to have a "statutory duty" to deliver all properly posted mail with no discretion to filter off any category. Nevertheless, the "Mandatory Opt Out Scheme" made it a posting condition for senders to include an "unsubscribe statement" in their circular mail. On return of such statements from recipients, the sender should cease further circular mail to those households.

4. PO found the proposed “sticker scheme” not workable. It would be hard, for example, to detect misplaced or forged stickers. Registration and maintenance of records would be cumbersome. Such a scheme would increase operational costs.

## Our Comments

5. In fact, the law vests in PO considerable discretion.

6. Unsolicited circular mail clearly constitutes a nuisance to those who do not want to receive such mail. It is no defence that the activity is justifiable by the benefits that the service provides to others.

7. The “Mandatory Opt Out Scheme” places an unreasonable burden on recipients to instruct each and every sender to stop sending circular mail to them. Lack of sanction against senders for non-compliance also renders the Scheme ineffective.

8. The proposed “sticker scheme” is worth consideration. PO could make it simple: a postman should not put any circular mail into a mailbox with the prescribed sticker. Registration and maintaining a database for the scheme is unnecessary.

## Conclusion and Recommendation

9. In light of the above, The Ombudsman considered the complaint substantiated. He recommended that PO review the Circular Service and explore an effective way for citizens to opt out if they do not wish to receive circular mail.

**A case of insensitivity to citizens’ choice**

## Transport Department (“TD”)

**Case No. OMB 2008/2502 – Non-franchised bus services**

**Allegation: illegitimately withholding processing of applications for transfer of vehicles – substantiated**

### Details of Complaint

The complainant, a Passenger Service Licence (“PSL”) holder, had applied to TD for transfer of her two vehicles registered for the operation of non-franchised bus (“NFB”) services to a company. However, her applications were still not approved after nearly three months. On enquiring with TD, she learned that since the two vehicles were subject to a Transport Tribunal (“TT”) review for operation of unauthorised NFB services, her applications for transfer were withheld by TD. The complainant was dissatisfied.



## Regulation of NFB Services

2. The operation of NFB services is regulated by the Commissioner for Transport ("the Commissioner") under the Road Traffic Ordinance ("the Ordinance"). Operators and vehicles are required to hold PSLs and PSL certificates respectively.
3. Should a PSL holder breach the relevant law or conditions, TD will conduct an inquiry. After considering the inquiry report, the Commissioner may suspend, cancel or vary the PSL and the PSL certificate.
4. The PSL holder may apply to TT within 21 days for review of the Commissioner's decision.

## Why Withhold Processing

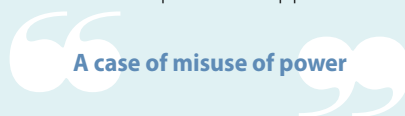
5. TD had found some PSL holders suspected of operating unauthorised NFB services to transfer their vehicles after an inquiry was completed but before TT gave its ruling. This was to evade the sanctions of suspension, cancellation or variation of their PSLs.
6. To plug the loophole, TD decided that where a PSL holder had no remaining vehicle to bear the penalty, processing of the transfer of his vehicle would be withheld until the penalty was meted out. Such an arrangement was endorsed by the Department of Justice ("D of J").
7. As the PSL certificates of the two vehicles in question were likely to be suspended upon conclusion of the TT review, TD withheld the processing of their transfer.

## No Legal Grounds for Withholding

8. Upon our query, TD consulted D of J again. The latter clarified that any penalty for operation of unauthorised NFB services should not affect the property rights of the PSL holder. TD, therefore, lacked legal grounds for withholding the processing of the transfer of the two vehicles in question. In other words, even though TT might decide to suspend the PSL certificates of the two vehicles, TD should still process the applications for their transfer as usual.

## Conclusion

9. In this light, The Ombudsman considered the complaint substantiated. He was pleased that TD subsequently rectified its impropriety and approved the complainant's applications for transfer of her two vehicles.



## Transport Department (“TD”)

Case No. OMB 2008/4632 – Illegal parking of bicycles

Main allegation: shirking responsibility for dealing with illegal parking of bicycles at a public transport interchange – substantiated



### The Complaint

The owners committee of a private building had, since the end of 2007, repeatedly complained to the District Office (“DO”) and TD about illegal parking of bicycles at the public transport interchange (“PTI”) underneath the building. Allegedly, the problem persisted because the departments concerned did not take action.

2. The Ombudsman found this essentially a complaint against TD.

### Background

3. The PTI was built by the developer of the building. Upon its completion in the mid-1990s, the title of the PTI was transferred to Government. TD then signed the Building Hand Over Certificate (“Certificate”) and took over the property as the “User Department” from the Government Property Agency (“GPA”). Section 344 of the Accommodation Regulations provides that the “User Department” shall manage the property and monitor its operation and utilisation.

### DO’s Action

4. DO had, as early as February 2007, through a Working Group on Tackling Illegal Bicycle Parking, liaised with relevant departments on how to solve the problem at the PTI. Owing to TD’s denial of responsibility, the problem remained. In the event, DO initiated joint action with the Police, TD and the Food and Environmental Hygiene Department to remove the illegally parked bicycles on an ad hoc basis.

### TD’s Response

5. TD initially denied being the “User Department” of the PTI, but later admitted to have signed the Certificate. TD maintained, however, that the responsibility for management and maintenance of the PTI should be shared among the various departments cited in a Maintenance Schedule.

### Our Comments

6. As TD had signed the Certificate and taken over the PTI as the User Department, it should be responsible for managing the PTI in accordance with the Accommodation Regulations. TD should not have used the Maintenance Schedule as an excuse to shirk its **management** responsibility, since the Schedule merely set out the responsibilities of various departments for the **maintenance** of the PTI. Indeed, the problem of illegal parking of bicycles at the PTI persisted mainly because TD refused to take up its managing/



coordinating role. Its concern over manpower constraints and the lack of statutory powers might be legitimate but those issues should be resolved, not evaded.

## Conclusion and Main Recommendations

7. In this light, The Ombudsman considered the complaint against TD substantiated.
8. The Ombudsman urged TD to take up and discharge its management responsibility for PTIs. He also recommended that TD:
  - (a) confirm with GPA the number and locations of similar PTIs;
  - (b) formulate a code of practice and guidelines with regard to such PTIs and conduct periodic site inspections; and
  - (c) seek delegation of statutory power to clear illegally parked bicycles at PTIs.

### A case of shirking of responsibility

## Water Supplies Department (“WSD”)

**Case No. OMB 2008/4817 – Recovery of water charges**  
**Main allegation: Causing nuisance to the complainant by repeatedly sending to his address the final bill and reminders for the former tenant – substantiated**

### The Complaint

The complainant alleged that since moving into his public housing unit, he had been receiving from WSD the final bill and reminders addressed to the former tenant Ms A. The staff at WSD’s Customer Telephone Enquiry Centre advised him to mark on the envelope that “the addressee had moved out” and send the bill back to the Department. Upon receipt, WSD would stop sending the bill to his address.

2. The complainant acted accordingly but, much to his annoyance, still received payment reminders. He was also worried that water supply to his unit might be disconnected because of the outstanding charge, or that his family member might just pay the bill by mistake.

### Response from WSD

3. WSD explained that if a registered consumer moved out of the registered address without providing a new correspondence address, it could only send the final bill to that address. The Housing Department (“HD”) had informed WSD of Ms A’s moving out but refused to disclose her new address on grounds of privacy. WSD thus sent the final bill intended for her to the old address (i.e. the complainant’s address).





4. The complainant claimed to have returned several water bills since May, but WSD only received one in October. It immediately revised the computer record of Ms A's address to that of WSD headquarters so that her water bills would not be sent to the complainant's address.

5. While admitting to a lack of internal guidelines on the handling of returned water bills, WSD insisted that the staff at the Enquiry Centre had tried her best to help handle the complainant's case. Anyway, a registered consumer can ask for a refund, upon presentation of relevant proof of payment, in case he settles by mistake the water bill of the former registered consumer.

## Our Observations and Comments

6. The staff at the Enquiry Centre had failed to explain clearly to the complainant that WSD might not be able to stop sending to his address the bills for Ms A at once upon receiving the returned bills. The case should have been referred to the responsible section promptly for follow-up action.

7. Changing the address of Ms A to WSD headquarters showed its inflexible procedures. It was a waste of resources and could not solve the problem completely. WSD had been informed in advance by HD that the complainant would move into the unit. In other words, the nuisance to him could have been avoided if WSD had updated its computer records in time.

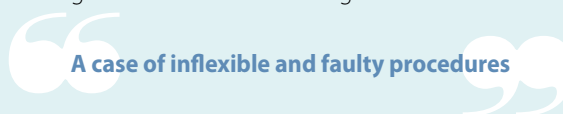
8. Overall, The Ombudsman considered the complaint substantiated.

## Recommendations

9. The Ombudsman made a number of recommendations to WSD, including:

- (a) to remind staff at the Enquiry Centre to listen to the caller's problem carefully so that appropriate assistance may be offered;
- (b) to formulate guidelines on the handling of returned water bills;
- (c) to improve its computer billing system to avoid waste of resources;
- (d) to discuss with HD more effective means to recover outstanding charges from registered consumers in public housing units who have moved out; and
- (e) to apologise to the complainant.

10. WSD subsequently instructed its staff at the Enquiry Centre to refer similar cases to the responsible section for follow-up action. It also formulated internal guidelines on the handling of returned water bills.



## Water Supplies Department (“WSD”)

**Case No. OMB 2008/4832 – Loss of water meter**

**Allegations: (a) wrongly assuming loss of complainant’s water meter and deducting its cost from her deposit without prior notice; (b) trying to cover up staff negligence with the excuse that the meter had been blocked from sight; and (c) failing to take prompt remedial action upon receipt of the complaint – substantiated**



### Details of Complaint

The complainant received a final bill from WSD stating that her account had been cancelled and deducting from the deposit the cost of her water meter, allegedly found missing. The complainant called WSD and was told that a Meter Reader had been to the roof of her building for meter reading but could not find her meter. A subsequent site visit by a field staff had also been to no avail.

2. The complainant indicated that she had lived in the premises for many years and had never relocated her water meter. Moreover, on the day she called WSD, she had asked the building management staff to check the meter on the roof and it was there intact.

3. Subsequently, WSD wrote to her that the meter had once been blocked by some planks from view so that the Meter Reader could not see it. The complainant considered the Department’s explanation unreasonable, as the Meter Reader should have contacted her or the building management office immediately when the meter was found missing. She was also dissatisfied that WSD had deducted the cost of the meter from her deposit without prior notice.

4. The complainant considered WSD staff lax in service attitude, not trying their best to help resolve her problem and shirking responsibility among themselves. She was unhappy that WSD had not apologised to her.

### Carelessness of Staff

5. This Office accepted WSD’s explanation that the Meter Reader concerned might have been inexperienced and so had not noticed that the complainant’s meter had been installed elsewhere. Yet, the Meter Reader should have tried to contact the complainant or notify the building management on leaving.

6. We believed that had the field staff been more careful in subsequent verification of the meter, he should have found it. However, he had not searched thoroughly enough. Nor had he attempted to check with the building management or the customer.

### Covering up Staff Negligence

7. WSD confirmed that the planks had not concealed the water meter but been placed next to it. Its staff should not have assumed that the meter might have been blocked by the planks as an excuse for their repeated failure to find it.

## Failure to Handle Complaint Properly

8. Upon receipt of the complaint, WSD did promptly send staff for site inspection. The day after the water meter was confirmed to be intact, a Meter Reader was sent to take the reading again. Meanwhile, WSD completed the investigation within one week and issued a written reply.

9. However, WSD's reply only focused on defending its staff's error without a thorough investigation into the reason behind it. Until the complaint was lodged, WSD staff had never contacted the complainant or the building management office to get first-hand information.

10. This Office considered that the issue had arisen purely from the negligence and laxity of WSD staff. Yet, the complainant had to take much time and efforts on this incident. WSD had also failed to explain clearly the sequence of events as requested by the complainant. That was unfair to the complainant.

## Conclusion

11. In this light, The Ombudsman considered the complaint substantiated.

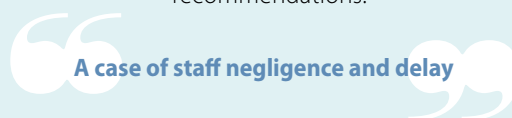
## Other Observations

12. This Office also noticed that it had been nearly three months since the meter was found missing before the field staff visited the site for verification. It was not only a serious delay but also an indication that WSD did not attach due importance to the loss of the water meter.

## Recommendations

13. The Ombudsman made a number of recommendations to WSD, including:

- (a) to instruct staff to contact the customer or building management concerned as soon as possible for early clarification if the location of any water meter cannot be ascertained on site;
- (b) to remind Meter Readers to alert their supervisors or make simple markings on site if a water meter is found installed at some special location; and
- (c) to draw up proper guidelines for staff with reference to our recommendations.



## Annex 15

# Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

### Food and Environmental Hygiene Department (“FEHD”)

#### Case No. OMB 2008/5141(I) – Access to information

**Main allegation: unreasonably refusing to disclose the amount of melamine found in food samples tested satisfactory – substantiated**

#### Access Refused

The complainant, in accordance with the Code on Access to Information (“the Code”), filled in a form for FEHD to provide information on the amount of melamine found in food samples that had been tested satisfactory during a certain period. FEHD rejected the request to “avoid public confusion and unnecessary worries”.

#### Information That may be Refused

2. The Code stipulates that information should be made available either routinely or in response to a request, unless it falls within the 16 categories set out in Part 2 of the Code, such as defence and security, legal proceedings and third party information.

#### FEHD’s Grounds for Refusal

3. In September 2008, FEHD began to test for melamine in food samples and announce the results on its website. However, only the amount found in unsatisfactory samples would be disclosed, while samples passing the test would all be classified as “satisfactory” without specifying the amount of melamine found.

4. The Department explained that disclosing the amount of melamine in satisfactory food samples might cause concern and mislead the public that those foods were also unsafe because they contained melamine. The food industry might thus be affected unnecessarily and sue Government for compensation. As the information “relates to investigations which resulted in or may have resulted in proceedings”, access to such information could be refused under paragraph 2.6(c) of the Code.

## Enabling Informed Choice

5. This Office considers that when the amount of melamine found in food products is made known, consumers can make an informed choice. Food manufacturers may adjust their production methods or prices to attract customers and avoid decline in sales. FEHD should not have kept the community in the dark for fear of causing public concern or disruption to the market.

## Worries Unnecessary

6. FEHD's worry that disclosure might lead to legal liability was also unnecessary, so long as it could state clearly on its website that the food samples have passed the test and that the results are based on evidence. Regarding the interpretation of paragraph 2.6(c) of the Code, as FEHD would not even consider prosecuting the manufacturers of satisfactory food products, its citation of this provision was far-fetched and hardly convincing.

## Conclusion and Recommendations

7. The Ombudsman considered this complaint substantiated.
8. This case reflected a lack of understanding of the Code among FEHD staff. We recommended that the Department provide the complainant with the requested information and step up training of its staff on the Code.

**A case of lack of understanding of policy**

## Lands Department ("Lands D")

**Case No. OMB 2009/2408(I) – Release of documents**

**Allegation: unreasonable refusal of the complainant's request for copies of documents signed by his father on the assignment of a land licence and a building licence – partially substantiated**

## The Complaint

The complainant asked Lands D for copies of the following documents but was refused:

- (a) the land licence of his father;
- (b) the subsequent land licence of Mr A, who had been assigned the land; and
- (c) the undertaking for assignment of temporary building licence signed by the above two persons.

## Access to Information

2. The Code on Access to Information (“the Code”) stipulates that Government-held information should be provided to the public unless it falls within the circumstances set out in Part 2 of the Code, such as information held for or provided by a third party, or information that involves the privacy of an individual.

## Our Findings

### *Copy of Land Licence of Complainant’s Father*

3. Lands D refused to provide the complainant with a copy of his father’s land licence on the grounds that “the document had been cancelled and annulled”. As this is not a valid reason for refusal set out in Part 2 of the Code, the Department’s decision was inappropriate. Subsequently, Lands D learned that “personal data” apply only to living individuals. Since his father had passed away, the complainant, as his next-of-kin, was the “appropriate person” to have access to the document. Lands D finally decided to give a copy to the complainant.

### *Copy of Land Licence of Another Party*

4. It was not inappropriate for Lands D to refuse to provide the complainant with a copy of Mr A’s land licence on grounds of privacy. However, Lands D failed to explain in detail, as required by the Code. In this light, there was room for improvement.

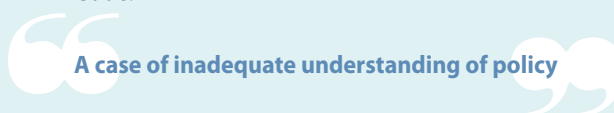
### *Copy of Undertaking for Assignment*

5. The undertaking for assignment contained the personal data of both the complainant’s father and Mr A. Out of concern for privacy, Lands D initially refused to provide the complainant with a copy. However, as “personal data” should apply only to living individuals and the two signatories had both passed away, such information ceased to be “personal data”. Moreover, the limited information about Mr A in the undertaking meant that its disclosure would not infringe upon the privacy of his next-of-kin. The Department, therefore, decided to provide a copy to the complainant. It is clear that Lands D had not examined the complainant’s request carefully at the outset.

## Conclusion and Recommendation

6. This incident pointed to Lands D’s misunderstanding of the Code. Though it eventually decided to provide the complainant with copies of his father’s land licence and the undertaking, there was already delay. Moreover, the Department had failed to give the complainant proper explanation when initially rejecting his request.

7. In this context, The Ombudsman considered the complaint partially substantiated. He recommended that Lands D step up staff training on the Code.





“ They are identical ! ”

Which vertical line is longer?





Table

Table 1  
Caseload

	Reporting year <sup>#</sup>				
	05/06	06/07	07/08	08/09	09/10
<b>(A) Enquiries received</b>	<b>14,633</b>	<b>15,626</b>	<b>12,169</b>	<b>14,005</b>	<b>13,789</b>
<b>(B) Complaints received<sup>@</sup></b>	<b>4,266</b>	<b>5,606</b>	<b>4,987</b>	<b>5,386[853]</b>	<b>4,803[393]</b>
<b>(C) Complaints brought forward</b>	<b>719</b>	<b>676</b>	<b>942</b>	<b>1,285</b>	<b>970</b>
<b>(D) Re-opened cases<sup>Σ</sup></b>	-	-	-	-	<b>96</b>
<b>(E) Complaints for processing = (B) + (C) + (D)</b>	<b>4,985</b>	<b>6,282</b>	<b>5,929</b>	<b>6,671</b>	<b>5,869</b>
<b>(F) Complaints handled and concluded</b>	<b>4,309</b>	<b>5,340</b>	<b>4,644</b>	<b>5,701[1,225]</b>	<b>4,775[402]</b>
<b>(i) Complaints pursued</b>	<b>1,825</b>	<b>1,716</b>	<b>1,977</b>	<b>2,684[411]</b>	<b>2,215[302]</b>
<b>By preliminary inquiries</b>	<b>1,758</b>	<b>1,643</b>	<b>1,938</b>	<b>2,437[224]</b>	<b>2,086[302]</b>
By referral to complainee departments/ organisations for replies (INCH)	185	143	81	148	236
By rendering assistance/clarification (RAC)	1,573	1,500	1,857	2,289[224]	1,850[302]
<b>By full investigation</b>	<b>55</b>	<b>71</b>	<b>38</b>	<b>247[187]</b>	<b>126</b>
- Withdrawn/Discontinued	2	0	1	1	0
- Substantiated	13	15	9	21	32
- Partially substantiated	14	16	13	171[161]	38
- Unsubstantiated	26	39	14	20[1]	51
- Inconclusive <sup>Λ</sup>	0	0	0	0	0
- Substantiated other than alleged	0	1	1	34[25]	5
<b>By mediation</b>	<b>12</b>	<b>2(6*)</b>	<b>1(3*)</b>	<b>0(0*)</b>	<b>3(1*)</b>
<b>(ii) Complaints screened out</b>	<b>1,113</b>	<b>2,385</b>	<b>1,246</b>	<b>1,108[100]</b>	<b>1,114[45]</b>
- Restrictions	351	394	375	477[76]	418[20]
- Outside jurisdiction	762	1,991	871	631[24]	696[25]
<b>(iii) Complaints not pursued</b>	<b>1,371</b>	<b>1,239</b>	<b>1,421</b>	<b>1,909[714]</b>	<b>1,446[55]</b>
- Discontinued	137	57	436	110[38]	71[6]
- Withdrawn	147	164	157	245	218[3]
- Not undertaken <sup>@</sup>	1,087	1,018	828	1,554[676]	1,157[46]
<b>(G) Percentage of complaints concluded = (F) ÷ (E)</b>	<b>86%</b>	<b>85%</b>	<b>78.3%</b>	<b>85.5%</b>	<b>81.4%</b>
<b>(H) Total cases carried forward = (E) - (F)</b>	<b>676</b>	<b>942</b>	<b>1,285</b>	<b>970</b>	<b>1,094</b>
<b>(I) Number of direct investigations completed</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>6</b>	<b>7</b>
<b>(J) Direct investigation assessments completed</b>	<b>6</b>	<b>5</b>	<b>2</b>	<b>4</b>	<b>8</b>

# From 1 April to 31 March of the next year.

@ From 2006/07, these exclude "complaints to others copied to us". Please refer to the "Glossary of Terms".

Σ Including cases which had been closed for being unpursuable in previous year but subsequently became pursuable and re-opened for inquiry in current year and cases reviewed by full investigation (not available before 2009/10).

Λ Previously "Incapable of determination".

\* Number of cases attempted for mediation but not accepted by party(ies) concerned (not available before 2006/07).

[ ] Number of topical cases (not available before 2008/09).

Table 2 &amp; 3

Table 2 Enquiries/Complaints Received

Reporting Year

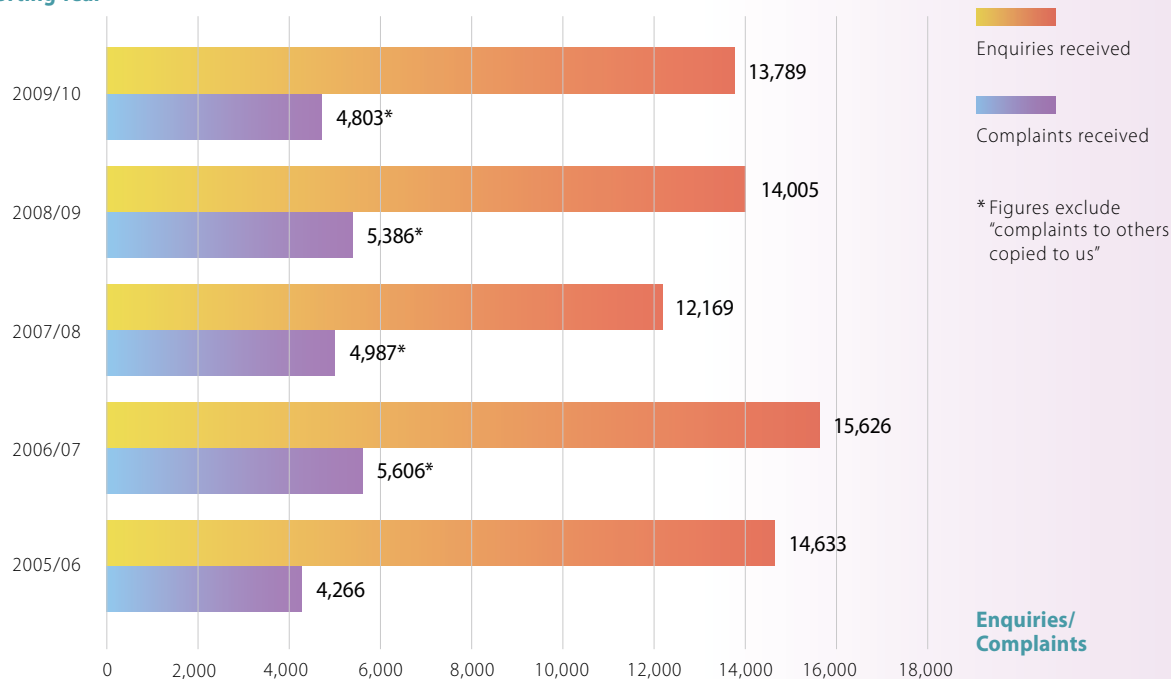
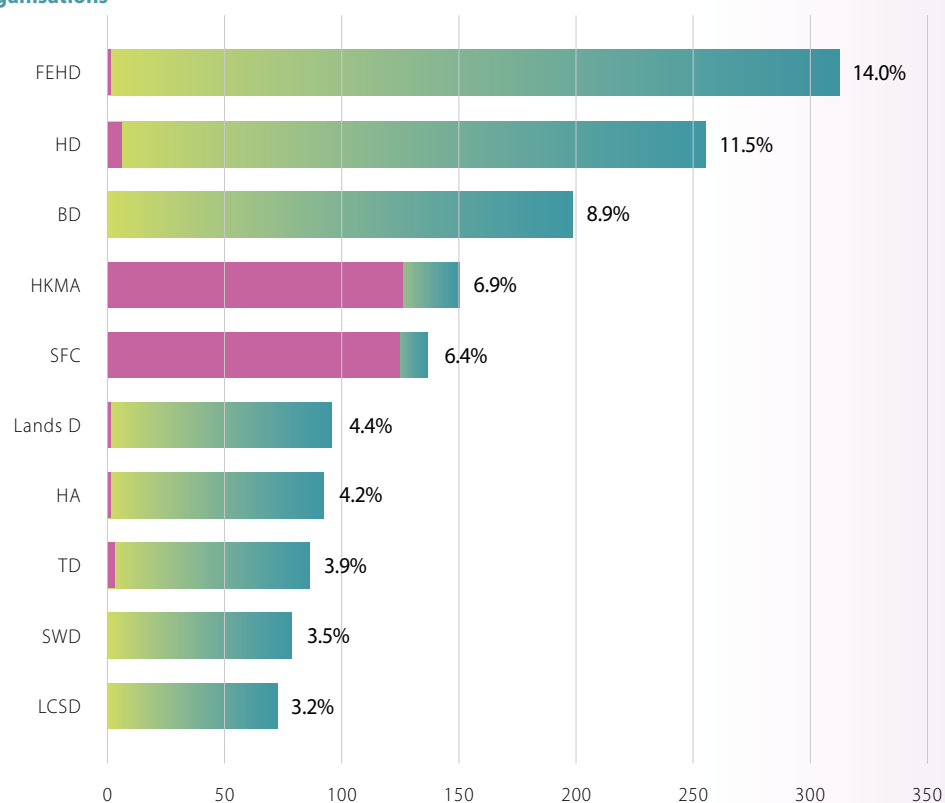


Table 3 Complaint Cases Pursued: Top Ten Organisations

Organisations



Note 1.  
"Complaint Cases Pursued" are cases handled by way of preliminary inquiries, full investigation or mediation.

Note 2.  
The top ten organisations accounted for 66.9% of the complaints pursued.

Note 3.  
Signifies topical complaints (arising from the same social topics).

Table 4

# Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	47	39
Airport Authority	(AA)	5	5
Architectural Services Department	(Arch SD)	16	10
Audit Commission	(Aud)	2	1
Auxiliary Medical Service	(AMS)	1	1
Buildings Department	(BD)	381	282
Census and Statistics Department	(C & SD)	4	6
Civil Aid Service	(CAS)	0	2
Civil Aviation Department	(CAD)	3	8
Civil Engineering and Development Department	(CEDD)	15	15
Companies Registry	(CR)	6	11
Correctional Services Department	(CSD)	36	136
Customs and Excise Department	(C&ED)	42	18
Department of Health	(DH)	78	61
Department of Justice	(D of J)	36	21
Drainage Services Department	(DSD)	23	25
Education Department	(ED)	1	0
Electrical and Mechanical Services Department	(E & MSD)	34	30
Employees Retraining Board	(ERB)	29	19
Environmental Protection Department	(EPD)	66	51
Equal Opportunities Commission	(EOC)	25	12
Fire Services Department	(FSD)	41	32
Food and Environmental Hygiene Department	(FEHD)	692	475
General Office of the Chief Executive's Office	(GOCEO)	6	8
Government Flying Service	(GFS)	1	0
Government Laboratory	(Govt Lab)	0	1
Government Logistics Department	(GLD)	6	7
Government Property Agency	(GPA)	7	5
GS – Chief Secretary for Administration's Office	(GS-CS)	45	25
GS – Civil Service Bureau	(GS-CSB)	24	28
GS – Commerce and Economic Development Bureau	(GS-CEDB)	5	17
GS – Commerce, Industry and Technology Bureau	(GS-CITB)	1	0

Organisation		Enquiries	Complaints
GS – Constitutional Affairs Bureau	(GS-CAB)	2	0
GS – Constitutional and Mainland Affairs Bureau	(GS-CMAB)	5	4
GS – Development Bureau	(GS-DEVB)	5	8
GS – Economic Development and Labour Bureau	(GS-EDLB)	1	0
GS – Education Bureau	(GS-EDB)	137	70
GS – Environment Bureau	(GS-ENB)	2	1
GS – Financial Services and the Treasury Bureau	(GS-FSTB)	10	12
GS – Food and Health Bureau	(GS-FHB)	2	0
GS – Home Affairs Bureau	(GS-HAB)	1	10
GS – Labour and Welfare Bureau	(GS-LWB)	7	9
GS – Security Bureau	(GS-SB)	4	5
GS – Transport and Housing Bureau	(GS-THB)	2	14
GS – (PO) Financial Secretary's Private Office	(GS-FSPO)	1	1
GS – Financial Secretary's Office	(GS-FS OFF)	3	3
Highways Department	(Hy D)	44	45
Home Affairs Department	(HAD)	122	124
Hong Kong Arts Development Council	(HKADC)	1	0
Hong Kong Examinations and Assessment Authority	(HKEAA)	55	51
Hong Kong Housing Authority	(HKHA)	36	10
Hong Kong Housing Society	(HKHS)	49	40
Hong Kong Monetary Authority	(HKMA)	40	172
Hong Kong Observatory	(HKO)	3	2
Hospital Authority	(HA)	472	238
Housing Department	(HD)	692	456
Immigration Department	(Imm D)	252	116
Information Services Department	(ISD)	1	1
Inland Revenue Department	(IRD)	90	57
Intellectual Property Department	(IPD)	2	2
Judiciary Administrator	(JA)	143	56
Kowloon-Canton Railway Corporation	(KCRC)	1	2
Labour Department	(LD)	132	75
Land Registry	(LR)	10	8
Lands Department	(Lands D)	252	208
Legal Aid Department	(LAD)	170	67
Legislative Council Secretariat	(LCS)	2	2
Leisure and Cultural Services Department	(LCSD)	160	134

**Table 4** Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Mandatory Provident Fund Schemes Authority	(MPFA)	75	24
Marine Department	(MD)	18	10
Office of the Telecommunications Authority	(OFTA)	44	22
Official Receiver's Office	(ORO)	40	20
Planning Department	(Plan D)	11	17
Post Office	(PO)	113	71
Privacy Commissioner for Personal Data	(PCO)	23	23
Radio Television Hong Kong	(RTHK)	7	5
Rating and Valuation Department	(RVD)	26	17
Registration and Electoral Office	(REO)	2	0
Securities and Futures Commission	(SFC)	25	155
Social Welfare Department	(SWD)	404	170
Student Financial Assistance Agency	(SFAA)	91	70
Television and Entertainment Licensing Authority	(TELA)	4	7
Trade and Industry Department	(TID)	6	2
Transport Department	(TD)	201	176
Treasury	(Try)	7	2
Urban Renewal Authority	(URA)	26	16
Vocational Training Council	(VTC)	24	18
Water Supplies Department	(WSD)	172	114
<b>Total</b>		<b>5,908</b>	<b>4,293</b>

Note 1. The total number of enquiries and complaints received in Table 1 are 13,789 and 4,803 respectively. They are different from the figures shown in Table 4 for the following reasons:

- An enquiry/complaint involving more than one organisation is shown against each of the organisation.
- Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

## Table 5, 6 & 7

Table 5 Nature of Complaints

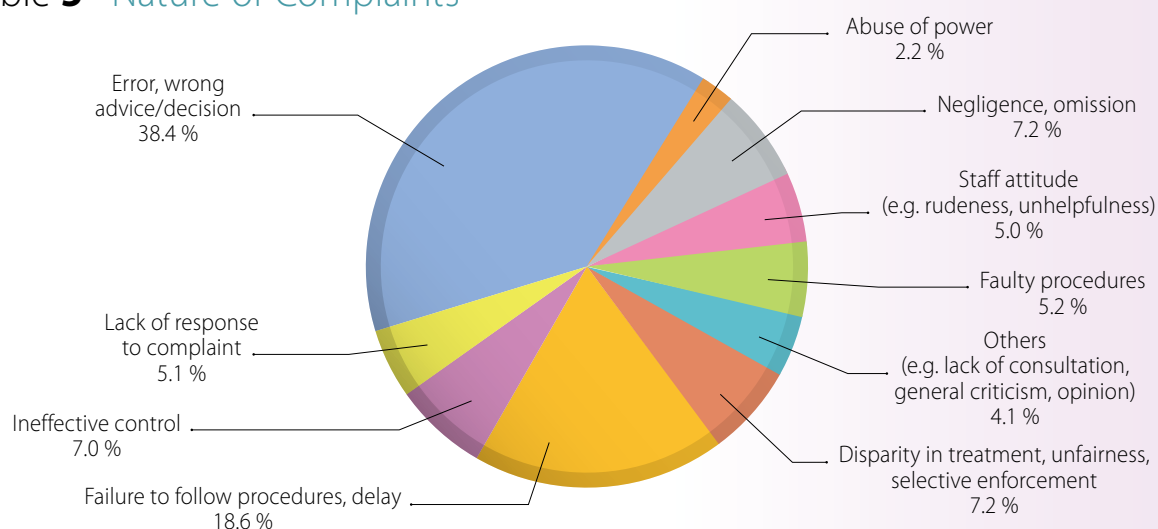


Table 6 Classification of Complaints Concluded: 4,775 Cases

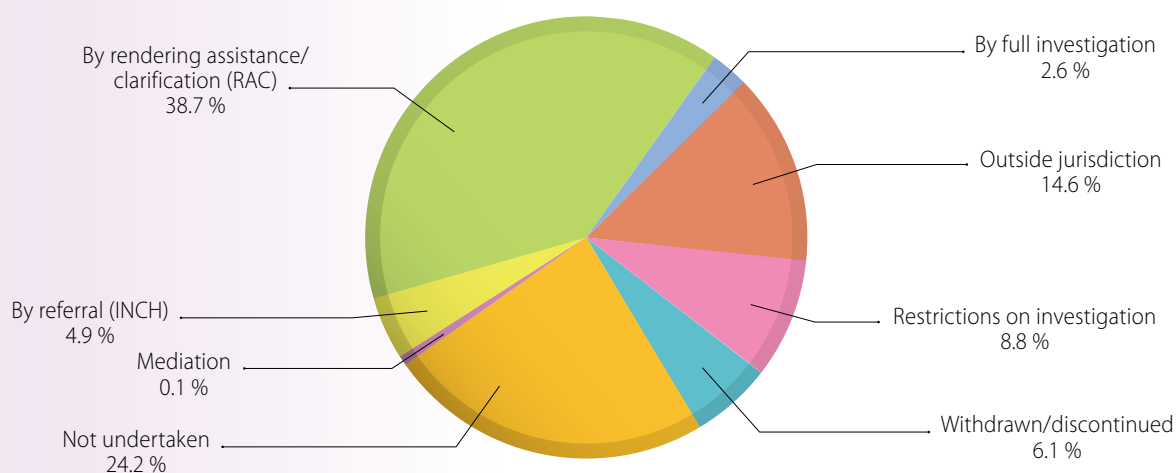


Table 7 Results of Complaints Concluded by Full Investigation: 126 Cases

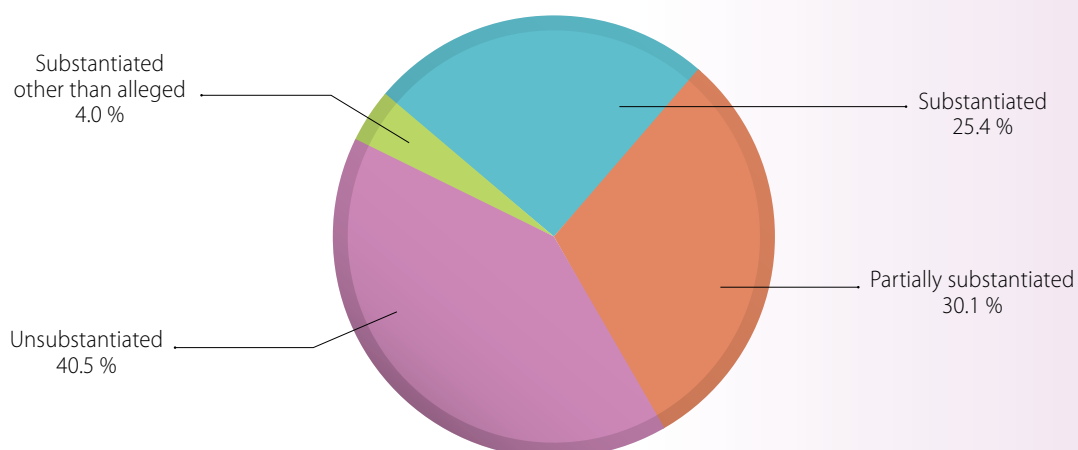


Table 8

# Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	27	6 (22%)	20 (74%)	1 (4%)	6
Architectural Services Department	1		1 (100%)		
Auxiliary Medical Service	1	1 (100%)			3
Buildings Department	201	58 (29%)	133 (66%)	10 (5%)	8
Census & Statistics Department	1		1 (100%)		
Civil Aviation Department	2		2 (100%)		
Civil Engineering and Development Department	7		7 (100%)		
Companies Registry	5		5 (100%)		
Correctional Services Department	27	7 (26%)	20 (74%)		3
Customs and Excise Department	6		6 (100%)		
Department of Health	19	6 (32%)	13 (68%)		1
Department of Justice	2	1 (50%)	1 (50%)		
Drainage Services Department	7		7 (100%)		
Electrical and Mechanical Services Department	10	4 (40%)	6 (60%)		
Employees Retraining Board	3	1 (33%)	2 (67%)		
Environmental Protection Department	18	2 (11%)	16 (89%)		
Equal Opportunities Commission	2		2 (100%)		
Fire Services Department	11	1 (9%)	10 (91%)		1
Food and Environmental Hygiene Department	264	82 (31%)	168 (64%)	14 (5%)	21
General Office of the Chief Executive's Office	4		4 (100%)		
Government Logistics Department	1	1 (100%)			2
Government Secretariat					
- Chief Secretary for Administration's Office	14	8 (57%)	6 (43%)		
- Civil Service Bureau	2	1 (50%)	1 (50%)		
- Commerce and Economic Development Bureau	2		2 (100%)		
- Constitutional and Mainland Affairs Bureau	1		1 (100%)		
- Development Bureau	2		2 (100%)		
- Education Bureau	20	5 (25%)	15 (75%)		3
- Financial Services and the Treasury Bureau	4		4 (100%)		
- Food and Health Bureau	1		1 (100%)		



Organisation	No. of complaints	Remedial action taken/suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
- Home Affairs Bureau	5	3 (60%)	2 (40%)		5
- Labour and Welfare Bureau	1		1 (100%)		
- Security Bureau	4	2 (50%)	2 (50%)		
- Transport and Housing Bureau	7	1 (14%)	6 (68%)		
- Financial Secretary's Office	1		1 (100%)		
Highways Department	13		13 (100%)		
Home Affairs Department	50	18 (36%)	30 (60%)	2 (4%)	7
Hong Kong Arts Development Council	1	1 (100%)			1
Hong Kong Examinations and Assessment Authority	17	4 (24%)	13 (76%)		4
Hong Kong Housing Authority	2		2 (100%)		
Hong Kong Housing Society	15	1 (6.7%)	13 (86.6%)	1 (6.7%)	
Hong Kong Monetary Authority	151	1 (1%)	150 (99%)		
Hong Kong Police Force	1		1 (100%)		
Hong Kong Sports Institute Limited	1		1 (100%)		
Hospital Authority	70	25 (35.7%)	39 (55.7%)	6 (8.6%)	11
Housing Department	215	27 (13%)	187 (87%)	1 (0%)	14
Immigration Department	31	12 (39%)	19 (61%)		6
Inland Revenue Department	15		15 (100%)		
Judiciary Administrator	16	7 (44%)	9 (56%)		2
Labour Department	13	5 (38%)	8 (62%)		3
Land Registry	1		1 (100%)		
Lands Department	74	23 (31%)	51 (69%)		13
Legal Aid Department	15	2 (13%)	13 (87%)		1
Leisure and Cultural Services Department	66	25 (37.8%)	36 (54.6%)	5 (7.6%)	18
Mandatory Provident Fund Schemes Authority	8	3 (37.5%)	5 (62.5%)		
Not Specified	2	1 (50%)	1 (50%)		
Office of the Telecommunications Authority	13	4 (31%)	9 (69%)		4
Official Receiver's Office	4	1 (25%)	3 (75%)		
Planning Department	5	1 (20%)	4 (80%)		
Post Office	21	11 (52%)	10 (48%)		5
Privacy Commissioner for Personal Data	5	3 (60%)	2 (40%)		
Rating and Valuation Department	3	1 (33%)	2 (67%)		1
Securities and Futures Commission	141		141 (100%)		
Social Welfare Department	55	11 (20%)	44 (80%)		4
Student Financial Assistance Agency	17	5 (29%)	12 (71%)		3
Television and Entertainment Licensing Authority	5	1 (20%)	4 (80%)		1

**Table 8** Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Trade and Industry Department	1		1 (100%)		
Transport Department	67	13 (19%)	54 (81%)		5
Urban Renewal Authority	1		1 (100%)		
Vocational Training Council	6	3 (50%)	3 (50%)		3
Water Supplies Department	46	11 (24%)	31 (67%)	4 (9%)	5
<b>Total</b>	<b>1,850</b>	<b>410</b>	<b>1,396</b>	<b>44</b>	<b>164</b>

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/Clarification are not shown.

Table 9

# Processing Time of Complaints Concluded

## Processing Time of Complaints Concluded

TIME \ YEAR	05/06	06/07	07/08	08/09	09/10
Less than 1 month	56.4%	64.7%	49.7%	46.6%	46.4%
1 – 3 months	15.4%	11.6%	18.4%	25.9%	18.9%
3 – 6 months	26.2%	22.3%	30.4%	26.0%	33.1%
6 – 9 months	1.3%	0.8%	0.9%	0.8%	0.5%
9 – 12 months	0.3%	0.5%	0.4%	0.3%	0.4%
More than 12 months	0.4%	0.1%	0.2%	0.4%	0.7%
<b>Total</b>	<b>4,309</b>	<b>5,340</b>	<b>4,644</b>	<b>5,701</b>	<b>4,775</b>

## Processing Time for Complaints Concluded by Full Investigation and Other Modes

TIME \ YEAR	05/06	06/07	07/08	08/09	09/10
<b>Concluded by full investigation</b>					
Less than 3 months	3.6%	0.0%	0.0%	10.9%	0.8%
3 – 6 months	23.7%	36.6%	23.6%	73.7%	54.0%
6 – 9 months	32.7%	22.5%	21.1%	4.4%	11.9%
9 – 12 months	21.8%	32.4%	34.2%	5.3%	7.9%
More than 12 months	18.2%	8.5%	21.0%	5.7%	25.4%
<b>Number of complaints</b>	<b>55</b>	<b>71</b>	<b>38</b>	<b>247</b>	<b>126</b>
<b>Concluded by other modes</b>					
Less than 1 month	57.1%	65.6%	50.1%	48.7%	47.7%
1 – 3 months	15.6%	11.7%	18.6%	26.6%	19.3%
3 – 6 months	26.3%	22.1%	30.4%	23.9%	32.6%
6 – 9 months	0.9%	0.5%	0.7%	0.6%	0.2%
9 – 12 months	0.0%	0.1%	0.2%	0.1%	0.2%
More than 12 months	0.1%	0.0%	0.0%	0.1%	0.0%
<b>Number of complaints</b>	<b>4,254</b>	<b>5,269</b>	<b>4,606</b>	<b>5,454</b>	<b>4,649</b>

# The Ombudsman

# Financial Statements

For The Year Ended  
31 March 2010

# Independent Auditor's Report to The Ombudsman

*(Established in Hong Kong pursuant to The Ombudsman Ordinance)*

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We have audited the financial statements of The Ombudsman set out on pages 3 to 17, which comprise the balance sheet as at 31 March 2010, and the statement of income and expenditure, the statement of comprehensive income, the statement of changes in funds and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes.

## ***The Ombudsman's responsibility for the financial statements***

The Ombudsman is responsible for the preparation and the true and fair presentation of these financial statements in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and the true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

## ***Auditor's responsibility***

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Independent Auditor's Report to The Ombudsman (continued)

*(Established in Hong Kong pursuant to The Ombudsman Ordinance)*

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### **Opinion**

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2010 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.



Certified Public Accountants  
8th Floor, Prince's Building  
10 Chater Road  
Central, Hong Kong  
19 May 2010

## Statement of Income and Expenditure for The Year Ended 31 March 2010

(Expressed in Hong Kong dollars)

	Note	2010	2009
<b>Income</b>			
Government subventions	3	\$ 90,051,657	\$ 89,037,000
Amortisation of Government subventions	3	2,965,040	2,965,040
Interest income on bank deposits		5,557,731	8,615,545
Other income		2,291	2,754
		<u>\$ 98,576,719</u>	<u>\$ 100,620,339</u>
<b>Expenditure</b>			
Operating expenses	4	(75,871,436)	(72,526,680)
<b>Surplus for the year</b>		<u>\$ 22,705,283</u>	<u>\$ 28,093,659</u>

## Statement of comprehensive income for the year ended 31 March 2010

The Ombudsman had no components of comprehensive income other than "surplus for the year" in either of the periods presented. Accordingly, no separate statement of comprehensive income is presented as The Ombudsman's "total comprehensive income" was the same as the "surplus for the year" in both periods.

The notes on pages 7 to 17 form part of these financial statements.



# Balance Sheet as at 31 March 2010

(Expressed in Hong Kong dollars)

	Note	2010	2009
<b>ASSETS</b>			
<b>Non-current assets</b>			
Property, plant and equipment	7	\$ 18,609,140	\$ 19,932,604
Prepaid operating lease	8	63,625,076	65,019,296
		<u>\$ 82,234,216</u>	<u>\$ 84,951,900</u>
<b>Current assets</b>			
Deposits and prepayments		\$ 700,737	\$ 797,562
Interest receivable		1,606,153	3,632,164
Time deposits with maturity over three months		275,609,000	244,193,000
Cash and cash equivalents	9	5,077,773	13,174,601
		<u>\$ 282,993,663</u>	<u>\$ 261,797,327</u>
<b>Total assets</b>		<u>\$ 365,227,879</u>	<u>\$ 346,749,227</u>
<b>LIABILITIES</b>			
<b>Non-current liabilities</b>			
Contract gratuity payable - non-current	10	\$ 3,383,900	\$ 3,432,868
Government subventions - non-current	3	76,877,401	79,842,441
		<u>\$ 80,261,301</u>	<u>\$ 83,275,309</u>
<b>Current liabilities</b>			
Other payables and accruals		\$ 1,857,474	\$ 1,611,944
Contract gratuity payable - current	10	3,948,314	5,406,467
Government subventions - current	3	2,965,040	2,965,040
		<u>\$ 8,770,828</u>	<u>\$ 9,983,451</u>
<b>Total liabilities</b>		<u>\$ 89,032,129</u>	<u>\$ 93,258,760</u>
<b>FUNDS</b>			
Accumulated funds		<u>\$ 276,195,750</u>	<u>\$ 253,490,467</u>
<b>Total funds and liabilities</b>		<u>\$ 365,227,879</u>	<u>\$ 346,749,227</u>

Approved and authorised for issue by The Ombudsman on 19 May 2010



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The Ombudsman

The notes on pages 7 to 17 form part of these financial statements.

## Statement of Changes in Funds for The Year Ended 31 March 2010

*(Expressed in Hong Kong dollars)*

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At 1 April 2008	\$ 225,396,808
Surplus for the year	<u>28,093,659</u>
At 31 March 2009	\$ 253,490,467 =====
At 1 April 2009	\$ 253,490,467
Surplus for the year	<u>22,705,283</u>
At 31 March 2010	\$ 276,195,750 =====

# Cash Flow Statement for The Year Ended 31 March 2010

(Expressed in Hong Kong dollars)

	Note	2010	2009
<b>Operating activities</b>			
Surplus for the year		\$ 22,705,283	\$ 28,093,659
Adjustments for:			
- Interest income		(5,557,731)	(8,615,545)
- Depreciation		2,482,228	2,188,980
- Amortisation of prepaid operating lease		1,394,220	1,394,220
- Amortisation of Government subventions		(2,965,040)	(2,965,040)
- (Gain)/loss on disposal of property, plant and equipment		(1,790)	4,431
<b>Operating surplus before changes in working capital</b>		\$ 18,057,170	\$ 20,100,705
Increase/(decrease) in deposits and prepayments		96,825	(4,295)
Increase/(decrease) in other payables and accruals		245,530	(2,063,995)
(Decrease)/increase in contract gratuity payable		(1,507,121)	2,439,146
<b>Net cash generated from operating activities</b>		\$ 16,892,404	\$ 20,471,561
<b>Investing activities</b>			
Interest received		\$ 7,583,742	\$ 9,474,279
Payments for purchase of property, plant and equipment		(1,158,818)	(1,133,186)
Increase in bank deposits with original maturity over three months		(31,416,000)	(19,987,000)
Proceeds from sale of property, plant and equipment		1,844	5,768
<b>Net cash used in investing activities</b>		\$ (24,989,232)	\$ (11,640,139)
<b>Net (decrease)/increase in cash and cash equivalents</b>		\$ (8,096,828)	\$ 8,831,422
<b>Cash and cash equivalents at beginning of the year</b>	9	13,174,601	4,343,179
<b>Cash and cash equivalents at end of the year</b>	9	\$ 5,077,773	\$ 13,174,601

The notes on pages 7 to 17 form part of these financial statements.

# Notes to the Financial Statements

*(Expressed in Hong Kong dollars unless otherwise indicated)*

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## 1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by The Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

## 2 Significant accounting policies

### (a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"), accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued one new HKFRS, a number of amendments to HKFRSs and new Interpretations that are first effective for the current accounting period of The Ombudsman. Of these, HKAS 1 (revised 2007), Presentation of financial statements is relevant to The Ombudsman's financial statements. The adoption of the new and revised HKFRSs has no significant impact to the financial statements of The Ombudsman for the years ended 31 March 2009 and 31 March 2010.

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (note 15).

### (b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

## 2 Significant accounting policies (continued)

### (b) Basis of preparation of the financial statements (continued)

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

### (c) Property, plant and equipment and depreciation

Property, plant and equipment are stated in the balance sheet at cost less accumulated depreciation and impairment losses (see note 2(e)).

Depreciation is calculated to write off the cost of items of property, plant and equipment less their estimated residual value, if any, using the straight-line method over their estimated useful lives as follows:

Leasehold improvements	10 years
Building	40 years
Office equipment	5 years
Office furniture	5 years
Computer equipment	4 years
Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement or disposal.

### (d) Leased assets

#### (i) Classification of assets leased to The Ombudsman

Assets that are held by The Ombudsman under leases which transfer to The Ombudsman substantially all the risks and rewards of ownership are classified as being held under finance leases. Leases which do not transfer substantially all the risks and rewards of ownership to The Ombudsman are classified as operating leases.

#### (ii) Operating lease charges

Where The Ombudsman has the use of other assets under operating leases, payments made under the leases are charged to the statement of income and expenditure in equal instalments over the accounting years covered by the lease term, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased asset. Lease incentives received are recognised in profit or loss as an integral part of the aggregate net lease payments made. Contingent rentals are charged to profit or loss in the accounting period in which they are incurred.

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## **2 Significant accounting policies (continued)**

### **(e) Impairment of assets**

Internal and external sources of information are reviewed at each balance sheet date to identify indications that the property, plant and equipment may be impaired or an impairment loss previously recognised no longer exists or may have decreased.

If any such indication exists, the property, plant and equipment's recoverable amount is estimated. An impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount.

#### **(i) Calculation of recoverable amount**

The recoverable amount of a property, plant and equipment is the greater of its net selling price and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specific to the asset. Where the property, plant and equipment do not generate cash inflows largely independent of those from other assets, the recoverable amount is determined for the smallest group of assets that generates cash inflows independently (i.e. a cash-generating unit).

#### **(ii) Reversals of impairment losses**

An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount.

A reversal of impairment losses is limited to the asset's carrying amount that would have been determined had no impairment loss been recognised in prior years. Reversals of impairment losses are credited to the statement of income and expenditure in the year in which the reversals are recognised.

### **(f) Other payable and accruals**

Other payable and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

### **(g) Employee benefits**

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Funds as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

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## 2 Significant accounting policies (continued)

### (h) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

### (i) Government grants

Government grants are recognised in the balance sheet initially when there is reasonable assurance that they will be received and that The Ombudsman will comply with the conditions attaching to them. Grants that compensate The Ombudsman for expenses incurred are recognised as revenue in the statement of income and expenditure on a systematic basis in the same periods in which the expenses are incurred. Grants that compensate the group for the cost of an asset are deducted from the carrying amount of the asset and consequently are effectively recognised in the statement of income and expenditure over the useful life of the asset by way of reduced depreciation expense.

### (j) Income recognition

Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

#### (i) Government subventions

Government subventions are accounted for on an accrual basis in accordance with note 2(i).

#### (ii) Interest income

Interest income is recognised as it accrues using the effective interest method.

#### (iii) Other income

Other income is recognised on an accrual basis.

## 2 Significant accounting policies (continued)

### (k) Related parties

For the purposes of these financial statements, a party is considered to be related to The Ombudsman if:

- (i) the party has the ability, directly or indirectly through one or more intermediaries, to control The Ombudsman or exercise significant influence over The Ombudsman in making financial and operating policy decisions, or has joint control over The Ombudsman;
- (ii) The Ombudsman and the party are subject to common control;
- (iii) the party is a member of key management personnel of The Ombudsman or The Ombudsman's parent, or a close family member of such an individual, or is an entity under the control, joint control or significant influence of such individuals;
- (iv) the party is a close family member of a party referred to in (i) or is an entity under the control, joint control or significant influence of such individuals; or
- (v) the party is a post-employment benefit plan which is for the benefit of employees of The Ombudsman or of any entity that is a related party of The Ombudsman.

Close family members of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity.

## 3 Government subventions/amortisation of Government subventions

Government subventions represent the funds granted by the Government for daily operations of The Ombudsman. Amortisation of Government subventions represents the funds granted by the Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2010	2009
Government subventions	\$ 79,842,441	\$ 82,807,481
Current portion of government subventions	(2,965,040)	(2,965,040)
	<u>\$ 76,877,401</u>	<u>\$ 79,842,441</u>
	=====	=====



#### 4 Operating expenses

	2010	2009
Employee benefit expense (Note 5)	\$ 65,472,567	\$ 63,554,087
Depreciation of property, plant and equipment	2,482,228	2,188,980
Rates and management fee	2,145,876	2,099,276
Amortisation of prepaid operating lease	1,394,220	1,394,220
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	50,000	46,000
Announcement of public interest expense	1,312,576	-
Other expenses	2,922,769	3,152,917
	<u>\$ 75,871,436</u>	<u>\$ 72,526,680</u>
	=====	=====

#### 5 Employee benefit expense

	2010	2009
Salaries and allowances	\$ 57,638,893	\$ 55,571,298
Contract gratuity	5,275,472	5,783,584
Pension costs - MPF scheme	1,210,587	1,119,384
Unutilised annual leave	336,395	79,909
Other employee benefit expenses	1,011,220	999,912
	<u>\$ 65,472,567</u>	<u>\$ 63,554,087</u>
	=====	=====

#### 6 Key management compensation

	2010	2009
Short-term employee benefits	\$ 12,148,098	\$ 11,583,458
Post-employment benefits	1,657,971	1,595,352
	<u>\$ 13,806,069</u>	<u>\$ 13,178,810</u>
	=====	=====

## 7 Property, plant and equipment

	<i>Building</i>	<i>Leasehold improvements</i>	<i>Office furniture</i>	<i>Office equipment</i>	<i>Computer equipment</i>	<i>Motor vehicles</i>	<i>Total</i>
<b>Cost:</b>							
At 1 April 2008	\$ 16,800,000	\$ 11,549,080	\$ 71,823	\$ 512,531	\$ 1,526,215	\$ 1	\$ 30,459,650
Additions	-	22,755	380,409	194,744	535,278	-	1,133,186
Disposals	-	-	(9,454)	(3,500)	(885)	-	(13,839)
At 31 March 2009	<u>\$ 16,800,000</u>	<u>\$ 11,571,835</u>	<u>\$ 442,778</u>	<u>\$ 703,775</u>	<u>\$ 2,060,608</u>	<u>\$ 1</u>	<u>\$ 31,578,997</u>

### **Accumulated depreciation:**

At 1 April 2008	\$ 2,542,438	\$ 6,417,889	\$ 8,263	\$ 98,901	\$ 393,562	\$ -	\$ 9,461,053
Charge for the year	420,000	1,156,554	43,187	121,495	447,744	-	2,188,980
Written back on disposal	-	-	(1,668)	(1,487)	(485)	-	(3,640)
At 31 March 2009	<u>\$ 2,962,438</u>	<u>\$ 7,574,443</u>	<u>\$ 49,782</u>	<u>\$ 218,909</u>	<u>\$ 840,821</u>	<u>\$ -</u>	<u>\$ 11,646,393</u>

### **Net book value:**

At 31 March 2009	<u>\$ 13,837,562</u>	<u>\$ 3,997,392</u>	<u>\$ 392,996</u>	<u>\$ 484,866</u>	<u>\$ 1,219,787</u>	<u>\$ 1</u>	<u>\$ 19,932,604</u>
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	<i>Building</i>	<i>Leasehold improvements</i>	<i>Office furniture</i>	<i>Office equipment</i>	<i>Computer equipment</i>	<i>Motor vehicles</i>	<i>Total</i>
<b>Cost:</b>							
At 1 April 2009	\$ 16,800,000	\$ 11,571,835	\$ 442,778	\$ 703,775	\$ 2,060,608	\$ 1	\$ 31,578,997
Additions	-	362,968	23,558	27,630	564,862	179,800	1,158,818
Disposals	-	-	-	-	(1,178)	-	(1,178)
At 31 March 2010	<u>\$ 16,800,000</u>	<u>\$ 11,934,803</u>	<u>\$ 466,336</u>	<u>\$ 731,405</u>	<u>\$ 2,624,292</u>	<u>\$ 179,801</u>	<u>\$ 32,736,637</u>

### **Accumulated depreciation:**

At 1 April 2009	\$ 2,962,438	\$ 7,574,443	\$ 49,782	\$ 218,909	\$ 840,821	\$ -	\$ 11,646,393
Depreciation	420,000	1,179,802	92,472	144,777	612,665	32,512	2,482,228
Written back on disposal	-	-	-	-	(1,124)	-	(1,124)
At 31 March 2010	<u>\$ 3,382,438</u>	<u>\$ 8,754,245</u>	<u>\$ 142,254</u>	<u>\$ 363,686</u>	<u>\$ 1,452,362</u>	<u>\$ 32,512</u>	<u>\$ 14,127,497</u>

### **Net book value:**

At 31 March 2010	<u>\$ 13,417,562</u>	<u>\$ 3,180,558</u>	<u>\$ 324,082</u>	<u>\$ 367,719</u>	<u>\$ 1,171,930</u>	<u>\$ 147,289</u>	<u>\$ 18,609,140</u>
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## 8 Prepaid operating leases

The Ombudsman's interests in leasehold land represent prepaid operating lease payments and their net book values are analysed as follows:

	2010	2009
In Hong Kong held on		
- Leases of over 50 years	\$ 63,625,076 =====	\$ 65,019,296 =====

## 9 Cash and cash equivalents

	2010	2009
Cash at bank	\$ 5,072,773	\$ 13,169,601
Cash in hand	5,000	5,000
	<hr/>	<hr/>
	\$ 5,077,773 =====	\$ 13,174,601 =====

## 10 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contract. The amount of gratuity ranges from 10% to 25% of the basic salary less employer's contributions to Mandatory Provident Fund.

## 11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

## 12 Commitments

- (a) Capital commitments outstanding at 31 March 2010 not provided for in the financial statements were as follows:

	2010	2009
Contracted for	\$ 800,000 =====	\$ 132,838 =====

- (b) At 31 March 2010, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2010	2009
Within 1 year	\$ 7,600 =====	\$ 7,600 =====

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## **13 Management of accumulated funds**

The Ombudsman's primary objectives when managing its accumulated funds are to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

## **14 Financial instruments**

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's activities do not expose it to foreign exchange risk, credit risk and liquidity risk. The Ombudsman has the short-term fixed rate bank deposits that are not subject to interest rate risk. The Ombudsman also has no other significant interest-bearing assets and liabilities. Accordingly, The Ombudsman's income and operating cash flows are substantially independent of changes in market interest rates and the exposure to cash flow and fair value interest rate risk is low.

### **(a) Credit risk**

On 14 October 2008, the Government announced the use of the exchange fund to immediately guarantee repayment of all customer deposits held with authorized institutions in Hong Kong Special Administrative Region ("HKSAR") (which cover licensed banks in HKSAR, among others, and include HKSAR branches of overseas institutions) following the principles of the Deposit Protection Scheme, until the end of 2010. The bank balances of The Ombudsman are kept in the said authorized institutions and are therefore protected under the said scheme.

### **(b) Liquidity risk**

The Ombudsman's policy is to regularly monitor current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

## 14 Financial instruments (continued)

### (b) Liquidity risk (continued)

The following table details the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

		2010			
	Carrying amount	Total contractual undiscounted cash flow	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years
Contract gratuity payable	\$ 7,332,214	\$ (7,332,214)	\$ (3,948,314)	\$ (1,741,289)	\$ (1,642,611)
Other payables and accruals	1,857,474	(1,857,474)	(1,857,474)	-	-
	<u>\$ 9,189,688</u>	<u>\$ (9,189,688)</u>	<u>\$ (5,805,788)</u>	<u>\$ (1,741,289)</u>	<u>\$ (1,642,611)</u>
	=====	=====	=====	=====	=====
		2009			
	Carrying amount	Total contractual undiscounted cash flow	Within 1 year or on demand	More than 1 year but less than 2 years	More than 2 years but less than 5 years
Contract gratuity payable	\$ 8,839,335	\$ (8,839,335)	\$ (5,406,467)	\$ (2,685,064)	\$ (747,804)
Other payables and accruals	1,611,944	(1,611,944)	(1,611,944)	-	-
	<u>\$ 10,451,279</u>	<u>\$ (10,451,279)</u>	<u>\$ (7,018,411)</u>	<u>\$ (2,685,064)</u>	<u>\$ (747,804)</u>
	=====	=====	=====	=====	=====

### (c) Sensitivity analysis

At 31 March 2010, it is estimated that a general increase/decrease of 100 basis points in interest rates, with all other variables held constant, would increase/decrease The Ombudsman's income and accumulated funds by approximately \$2,807,000 (2009: \$2,573,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the exposure to interest rate risk for both derivative and non-derivative financial instruments in existence at that date. The 100 basis point increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2009.

All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2010 and 2009.

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## **15 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2010**

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2010 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and new interpretations is expected to be in the period of initial application. So far it has concluded that while the adoption of these standards may result in new or amended disclosures, it is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

# “ Ombudsman

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